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42 & 43 Vict. c. 50 - 1879.

46 Id. c. 7. 1883.

From the Author

See 45 & 46 Vict. c. 43.

THE

Law and Practice

UNDER

THE BILLS OF SALE ACTS

1854, 1866, AND 1878.

COMPRISING

THE ACTS, PRECEDENTS, AND FORMS,

TOGETHER WITH

NOTES ON THE LAW OF FIXTURES AND BANKRUPTCY
SO FAR AS THE SAME RELATE TO
BILLS OF SALE.

BY

DARCY BRUCE WILSON, M.A.,

OF BALLIOL COLLEGE, OXFORD, AND THE INNER TEMPLE,
BARRISTER-AT-LAW.

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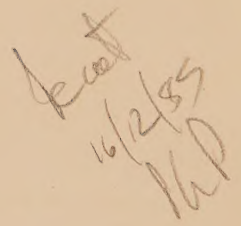

PREFACE.

THE Bills of Sale Acts, 1854 and 1866, being still in force as regards bills of sale executed before the 1st of January, 1879, the text of those Acts has been printed at length; the portions altered or amended by the Act of 1878 being, so far as possible, distinguished by italics.

The text of the Act of 1878 appears twice—in the first instance, at page 9, where the Act is printed by itself; and afterwards with notes, embodying the principal decisions on the former Acts, appended to the several sections.

The 21st section of the Act of 1878 provides that rules may be made for the purposes of the Act in the same manner as under the Judicature Act. No such rules have yet been issued, and, upon inquiry, I am informed that it is not intended to issue any at present. Under the circumstances, it is presumed that the practice which has been adopted under the

former Acts will apply to cases arising under the new Act, unless and until altered by rules.

The table of cases prefixed contains references to all the reports in which the cases cited appear.

D. B. W.

ADDENDUM.

Page 26, line 8 from top. This case, however, has been recently dissented from by the Court of Appeal; and it seems that now a liberal construction will be put upon the definition of a bill of sale: (*Ex parte Cooper, re Baum*, W. N. 1878, p. 244.) 10 Ch. D. 313.

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THE

Law and Practice

UNDER

THE BILLS OF SALE ACTS,

1854, 1866, 1878.

THE BILLS OF SALE ACT, 1854.

(17 & 18 Vict. c. 36.)

An Act for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.—[10*th July*, 1854.]

[The marginal references in this Act and the Act of 1866 are to the corresponding sections of the Act of 1878. The changes, other than mere verbal alterations, are indicated by italics.]

Whereas *frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons to the exclusion of the rest of their creditors: For remedy whereof,* be it therefore enacted, &c.

Sect. 3.

1. *Bills of sale to be void unless the same or a copy thereof be filed within twenty-one days, in like manner as warrants of attorney.*—Every bill of sale of personal chattels made *after the passing of this Act*, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale or at any future time, to seize or take possession of any *property and effects* comprised in or made
Sect. 10 (2). subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, *or* a true copy thereof, and of every attestation of the execution thereof, shall, together with *an affidavit* of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, *be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench*, within *twenty-one* days after the making or giving of such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader is now by law
Sect. 8. required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose *goods*, or any of them, are comprised in such bill of sale under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriffs' officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorizing the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made, and against every person on

whose behalf such process shall have been issued, be *null and void to all intents and purposes whatsoever*, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale which at or after *the time of such bankruptcy, or of filing the insolvent's petition in such insolvency*, or of the execution by the debtor of such assignment for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of *twenty-one* days, shall be in the possession, or apparent possession, of the person making such bill of sale, or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given, as the case may be.

Sect. 10 (3).

2. *Defeasance or condition of every bill of sale to be written on the same paper or parchment.*—If such bill of sale shall be made or given subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance or condition or declaration of trust shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on the same paper or parchment on which such bill of sale shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such bill of sale shall be null and void to all intents and purposes, as against the same persons and as regards the same property and effects, as if such bill of sale or a copy thereof had not been filed according to the provisions of this Act.

3. *Officer of court to keep a book containing particulars of each bill of sale.*—This section was repealed by sect. 7 of the Act of 1866.

Sect. 18.

4. *Officer entitled to a fee of* 1*s. for filing bill of sale, and to account for the same.*—The said officer shall be entitled to receive, for his trouble in filing and entering every such bill of sale or a copy thereof as aforesaid, the sum of *one shilling* and no more; and

such officer shall render a like account to the Commissioners of Her Majesty's Treasury, &c.

Sect. 16. 5. *Office copies or extracts to be given on paying as for copies of judgments.*—Any person shall be entitled to have an office copy or an extract of every bill of sale, or of the copy thereof, filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in the said *Court of Queen's Bench.*

Sect. 15. 6. *Satisfaction may be entered.*—It shall be lawful for any *judge of the said Court of Queen's Bench* to order a memorandum of satisfaction to be written upon any *bill of sale or copy thereof respectively* as aforesaid, *if it shall appear to him* that the debt (if any) for which such bill of sale is given as security shall have been satisfied or discharged.

7. *Interpretation of terms.*—In construing this Act the following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Sects. 4, 6. *The expression "bill of sale"* shall include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same; marriage settlements; transfers or assignments of any ship or vessel or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts or at sea; bills of lading; India warrants; warehouse-keepers' certificates; warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by

indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, *fixtures*, and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of any incorporated or joint-stock company, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale: Sects. 4, 5, 7.

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale so long as they shall remain or be in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

8. *Extent of Act.*—This Act shall not extend to Scotland or Ireland. Sect. 24.

THE BILLS OF SALE ACT, 1866.

(29 & 30 VICT. c. 96.)

An Act to amend the Bills of Sale Act, 1854—[10*th August*, 1866.]

[The references in the margin are to the corresponding sections of the Bills of Sale Act, 1878. The changes, other than merely verbal alterations, are indicated by italics.]

1. *Construction of Act.*—The principal Act and this Act shall, as far as is consistent with the tenor of such Acts, be construed together.

2. *Short titles.*—The principal Act may be cited as "The Bills of Sale Act, 1854," and this Act may be cited as "The Bills of Sale Act, 1866."

Sect. 10 (2). 3. *Definition of registration of a bill of sale.*—The filing of *a bill of sale, or* a copy thereof, with the affidavit required by the principal Act, is hereinafter referred to as the registration of a bill of sale.

Sect. 11. 4. *Renewal of registration of bills of sale.*—The registration of a bill of sale under the principal Act shall, during the subsistence of such security, be renewed in manner hereinafter mentioned once in every period of five years, commencing from the day of the registration, and, if not so renewed, such registration shall cease to be of any effect at the expiration of any period of five years during which a renewal has not been made as hereby required, subject to this provision, that where a period of five years

from the original registration of any bill of sale under the principal Act has expired before the first day of January 1867, such bill of sale shall be as valid to all intents and purposes as it would have been if this Act had not been passed, if such registration be renewed in manner aforesaid before the first day of January 1867.

5. *Mode of renewing bill of sale.* — The registration of a bill of sale shall be renewed by some person filing in the office of the masters of the Court of Queen's Bench (being the officers acting as clerk of the docquets and judgments in the said court) an affidavit stating the date of such bill of sale, and the names, residences, and occupations of the respective parties thereto as stated therein, and also the date of the registration of such bill of sale, and that such bill of sale is still a subsisting security, and such masters shall thereupon number such affidavit and renumber the original bill of sale or copy filed in the said office with a similar number. Sect. 11. Sect. 12.

6. *Affidavit to bear a 5s. stamp.*—Every affidavit renewing the registration of a bill of sale shall bear an adhesive common law stamp of the value of five shillings, and may be *in the form* given in Schedule A. to this Act, and no further fee shall be payable on filing such affidavit. Sect. 18. Sect. 11.

7. *Masters of Queen's Bench to keep a book containing particulars of each bill of sale and affidavit—Book, &c., may be searched on payment of one shilling.* —After the passing of this Act, instead of the books directed to be kept by the third section of the principal Act, there shall be kept at the said office one book only, in which shall be fairly inserted, as and when such bills of sale or copies as required by the principal Act, or affidavit of renewal as required by this Act, are respectively filed, the name, residence, and occupation of the person by whom the bill of sale was made or given, or in case the same was made or given by any person under or in the execution of Sect. 12.

process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the said bill of sale was given, together with the number affixed to the said bill of sale or copy as directed by the principal Act or by this Act (as the case may be); and the date of the said bill of sale or copy, and of the registration thereof, and the date of the filing the said affidavit of renewal. and all such particulars, shall be entered according to the form given in Schedule B. to this Act; and the said book, and every bill of sale or copy and affidavit filed as aforesaid, may be searched and viewed by all persons at all reasonable times upon payment for *every search against one person* of the fee or sum of one shilling and no more, which fee shall be paid by a *common law* stamp.

Sect. 16.

Sect. 16. 8. *Office copies of affidavits to be supplied on payment for same.*—Any person shall be entitled to have an office copy of such affidavit of renewal as is required to be filed under this Act upon paying for the same at the like rate as for office copies of bills of sale filed under the principal Act.

Sect. 17. 9. *Affidavits may be sworn before one of the masters of the Queen's Bench.*—Any affidavit required by the principal Act or this Act may be sworn *before one of the masters of the Court of Queen's Bench.*

10. *Application of enactments under this Act.*—All enactments for the time being in force relating to common law stamps shall apply to the stamps to be provided for the purposes of this Act.

Sect. 24. 11. *Extent of Act.*—This Act shall not extend to Scotland or Ireland.

amended. 45 & 46 Vict. c. 43.

BILLS OF SALE ACT, 1878.

(41 & 42 VICT. c. 31.)

An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.—[22*nd July*, 1878.]

[The references in the margin are to the corresponding sections of the Bills of Sale Acts, 1854 and 1866. The changes, other than merely verbal alterations, introduced by this Act, are indicated by italics.]

WHEREAS it is expedient to consolidate and amend the law relating to bills of sale of personal chattels: be it enacted, &c.,

1. *Short title.*—This Act may be cited for all purposes as "The Bills of Sale Act, 1878."

2. *Commencement.*—This Act shall come into operation on the 1st day of January 1879, which day is in this Act referred to as the commencement of this Act.

3. *Application of Act.*—This Act shall apply to every bill of sale executed on or after the 1st day of January 1879 (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any *personal chattels* comprised in or made subject to such bill of sale. Sect. 1, 1854.

4. *Interpretation of terms.*—In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless Sect. 7, 1854.

there be something in the subject or context repugnant to such construction; (that is to say),

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, *inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods,* and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also *any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred,* but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehousekeepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (*when separately assigned or charged*) *fixtures and growing crops,* but shall not include chattel interests in real estate, *nor fixtures* (*except trade machinery, as hereinafter defined*), *when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in*

the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person:

"*Prescribed*" *means prescribed by rules made under the provisions of this Act.*

5. *Application of Act to trade machinery.—From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.*

For the purposes of this Act—

"*Trade machinery*" *means* the machinery used in or attached to any factory or workshop;

1st. *Exclusive of* the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers; and,

2nd. *Exclusive of* the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which

transmit the action of the motive-powers to the other machinery, fixed and loose; and,

3rd. *Exclusive of* the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"*Factory or workshop means* any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(*a.*) In or incidental to the making any article or part of an article; or

(*b.*) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or,

(*c.*) In or incidental to the adapting for sale any article.

6. *Certain instruments giving powers of distress to be subject to this Act.—Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.*

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

7. *Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.—No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.*

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

8. *Avoidance of unregistered bill of sale in certain cases.*—Every bill of sale to which this Act applies shall *be duly attested* and shall be *registered under this Act,* within *seven* days after the making or giving thereof, *and shall set forth the consideration for which such bill of sale was given,* otherwise such bill of sale, as against all *trustees or* assignees of the estate of the person whose *chattels,* or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any *chattels* comprised in such bill of sale, in the execution of any process of any court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process

Sect. 1, 1854.

shall have been issued, shall *be deemed fraudulent and void* so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after *the time of filing the petition for bankruptcy or liquidation*, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such *seven* days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

9. *Avoidance of certain duplicate bills of sale.*—*Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was bonâ fide given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.*

10. *Mode of registering bills of sale.*—A bill of sale *shall be attested and registered* under this Act in the following manner:

(1.) *The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor:*

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(2.) *Such bill*, with every schedule or inventory thereto annexed or therein referred to, *and also* a true copy of such bill and of every such

schedule or inventory, and of every attestation of the execution of such bill of sale, together with an *affidavit* of the time of such bill of sale being made or given, *and of its due execution and attestation,* and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence or occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, *shall be presented to and the said copy and affidavit shall be filed with* the *registrar* within *seven* clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed:

(3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void. Sect. 2, 1854.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

11. *Renewal of registration.*—The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a Sect. 4, 1866.

bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

Sect. 5, 1866. The renewal of a registration shall be effected by filing with the *registrar* an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Sect. 6, 1866. Every such affidavit may be *in the form* set forth in the Schedule (A.) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

Sect. 7, 1866. 12. *Form of register.*—The registrar shall keep a book (*in this Act called "the register"*) for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B.) to this Act annexed, *or in any other prescribed form,* the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of *the last previous entry relating to the same bill,* and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to

entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

13. *The registrar*—36 *&* 37 *Vict. c.* 66; 38 *&* 39 *Vict. c.* 77.—*The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts,* 1873 *and* 1875, *shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar.* Sect. 1, 1854.

14. *Rectification of register.—Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.*

15. *Entry of satisfaction.—Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar* may order a memorandum of satisfaction to be written upon any *registered copy* of a bill of sale, *upon the prescribed evidence being given* that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged. Sect. 6, 1854.

16. *Copies may be taken, &c.*—Any person shall be entitled to have an office copy or extract of any regis- Sect. 5, 1854.

tered bill of sale and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed there-
Sect. 8, 1866. with, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the *High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as primâ facie evidence thereof, and of the fact and date*
Sect. 7, 1866. *of registration as shown thereon.* Any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for *every copy of a bill of sale inspected;* such payment shall be made by a *judicature* stamp.

Sect. 9, 1866. 17. *Affidavits.*—Every affidavit required by or for the purposes of this Act may be sworn before a master *of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.*

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of *wilful and corrupt perjury.*

18. *Fees.*—There shall be paid and received in common law stamps the following fees, viz.:

Sect. 4, 1854.	*On filing a bill of sale*	2*s.*
	On filing the affidavit of execution of a bill of sale	2*s.*
Sect. 6, 1254.	On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing)	5*s.*

19. *Collection of fees under* 38 *&* 39 *Vict. c.* 77, *s.* 26.—*Sect.* 26 *of the Supreme Court of Judicature Act,* 1875, *and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if needs be, be made in relation to such fees accordingly.*

20. *Order and disposition*—32 *&* 33 *Vict. c.* 71.—*Chattels comprised in a bill of sale which has been and*

continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

21. *Rules*—36 *&* 37 *Vict. c.* 66; 38 *&* 39 *Vict. c.* 77.—*Rules for the purposes of this Act may be made and altered from time to time* by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

22. *Time for registration.—When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed,* the registration shall be valid if made on the next following day on which the office is open.

23. *Repeal of Acts*—17 *&* 18 *Vict. c.* 36; 29 *&* 30 *Vict. c.* 96.—*From and after the commencement of this Act, the Bills of Sale Act,* 1854, *and the Bills of Sale Act,* 1866, *shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force.*

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

24. *Extent of Act.*—This Act shall not extend to Scotland or Ireland. Sect. 8, 1854.

Amended. 45 & 46 Vict. c. 43.

BILLS OF SALE ACT, 1878.

[41 & 42 Vict. c. 31.]

An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.—[22*nd July*, 1878.]

Whereas it is expedient to consolidate and amend the law relating to bills of sale of personal chattels:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1. *Short title.*—This Act may be cited for all purposes as "The Bills of Sale Act, 1878." §§ 1, 2.

Sect. 2. *Commencement.*—This Act shall come into operation on the first day of January one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

The law consolidated and amended by this Act is for the most part to be found in the Bills of Sale Acts, 1854 and 1866 (17 & 18 Vict. c. 36, and 29 & 30 Vict. c. 96).

The new provisions introduced by this Act are:

1. Changes in the law.
2. Declaratory of the law as settled by decisions.
3. Merely verbal changes.

1. The principal changes in the law are as follows:

§ 3. Changes in the law.

(1) The definition of "bills of sale" is extended so as to include inventories of goods with receipts thereto attached, receipts for purchase-moneys of goods (s. 4), and certain instruments giving powers of distress (s. 6).

(2) The definition of "personal chattels" is altered, so as to include "trade machinery" (s. 5), but not other fixtures or growing crops, unless "separately assigned or charged" (ss. 4, 7).

This rule of construction is to apply, in certain cases, to bills executed before the commencement of the Act (s. 7).

(3) The consideration must be set forth; and bills of sale must be registered within seven instead of twenty-one days (s. 8).

(4) Duplicate or successive bills are in certain cases to be void (s. 9).

(5) Every bill of sale must be attested by a solicitor (s. 10).

(6) The original bill must be presented to the registrar; and the copy must be filed, not the bill *or* the copy (s. 10).

(7) As between holders, bills of sale are to have priority according to the date of their registration (s. 10).

(8) Making or using a false affidavit is to be perjury (s. 17).

(9) Numerous alterations are made in the provisions as to the form (s. 12) and rectification (s. 14) of the register; the entry of satisfaction (s. 15); the payment of fees (s. 18); and the making of rules (s. 21).

2. Declaratory provisions, *e.g.*:

(1) Certain equitable agreements are to be deemed bills of sale (s. 4).

(2) Transfers of bills of sale need not be registered (s. 10, sub-s. 3).

(3) Office copies of registered bills of sale and affidavits are to be *primâ facie* evidence thereof (s. 16).

Sect. 3. *Application of Act.*—This Act shall apply to every bill of sale (*a*) executed (*b*) on or after the first day of January one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels (*c*) comprised in (*d*) or made subject to such bill of sale.

(*a*) "*Bill of sale.*" — For the definition of bill of sale, see s. 4. § 3.

(*b*) "*Executed.*"—In the Act of 1854 the corresponding expression was "made." From this and other expressions in the Act, it would seem that the Act contemplates written bills of sale only, and not *parol* contracts under which while one person has the real possession another is entitled to the goods. See *Allsop* v. *Day* (8 Jur. N. S. 41), in which case Pollock, C.B., said, "You can no more register a parol contract than you can stamp it;" and in *Sumpter* v. *Cooper* (2 B. & Ad. 223) it was held that the Middlesex Registration Act does not apply to an equitable mortgage by deposit of deeds without any memorandum, there being no instrument to register. Parol "bills of sale."

On the other hand, in *Ex parte Tweedy, re Trethowan* (5 Ch. Div. 559), Bacon, C.J., held that an equitable mortgage of trade fixtures, by a mere deposit of title deeds, without any memorandum of charge, was void as against the trustee in bankruptcy of the mortgagor for want of registration. See also *Ex parte Cohen, re Cohn* (38 L. T. Rep. N. S. 884); *Ex parte Southam* (L. Rep. 17 Eq. 578); and this view seems supported by *Copland* v. *Davis* (L. Rep. 5 H. of L. 358), a case under the Bankers Act, in which Lord Hatherley (at p. 390) said: "If the security is one which cannot be registered, so much the worse for the person who takes the security." (See also p. 382.) But although there may be some doubt as to the necessity of registering a mere parol contract, yet, in a case where a writing may not be essential, the property having passed by the parol contract, if the terms of the contract are at the time reduced into writing and signed by the parties, such a document is a transfer or assurance of personal chattels within the meaning of the Act, and must be registered: (*Phillips* v. *Gibbons*, 5 W. Rep. 527; *Brantom* v. *Griffits*, 1 C. P. Div. 349; 2 C. P. Div. 212; *Agra Bank* v. *Barry*, L. Rep. 7 H. of L. 135.)

(*c*) "*Personal chattels.*"—This expression is defined in s. 4.

(*d*) "*Comprised in.*"—After-acquired chattels may be comprised in a bill of sale by special agreement, and the beneficial interest in such chattels, as soon as acquired, is transferred to the vendee or mortgagee, provided the contract is one of which the court will decree specific performance. Thus "A contract for the sale of goods, as, for example, of 500 chests of tea, is Assignment of after-acquired property.

§ 3. not a contract which would be specifically performed, because it does not relate to any chests of tea in particular; but a contract to sell 500 chests of the particular kind of tea which is now in my warehouse in Gloucester is a contract relating to specific property, and which would be specifically performed:" (per Lord Westbury, in *Holroyd* v. *Marshall*, 10 H. of L. Cas., at p. 209.) So a covenant that all the machinery which, during a certain period, should be placed on a mill in addition to or substitution for the original machinery should be subject to certain trusts, is one that would be specifically enforced: (*Ibid.*) But it was held by the Court of Exchequer that an assignment by a person "of all his furniture, &c., farming stock and produce, &c., and all other his personal estate and effects whatsoever then being or thereafter to be upon or about his dwelling-house, farm, and premises, situate at Reedham or elsewhere, in the kingdom of Great Britain," was not a contract capable of specific performance, and that after-acquired property did not pass thereby: (*Belding* v. *Read*, 34 L. J. Ex. 212; cf. *Leatham* v. *Amor*, 47 L. J. Q. B. 581.)

Licence to seize.

The agreement must purport to confer an interest in the future chattels immediately, by its own force, and without the necessity of any further act on the part of the assignee upon the future chattels coming into existence; and therefore an assignment of existing chattels, coupled with a mere licence to seize or take possession of after-acquired chattels, will not be construed as an equitable assignment of the latter, and the property will not pass until actual seizure (*Reeve* v. *Whitmore*, 33 L. J. Ch. 63); but a licence to seize after-acquired chattels followed by actual seizure vests the property in the grantee: (*Congreve* v. *Evetts*, 10 Ex. 298; *Hope* v. *Hayley*, 5 Ell. & Bl. 830; *Carr* v. *Allatt*, 27 L. J. Ex. 385; *Chidell* v. *Galsworthy*, 6 C. B. N. S. 471.)

A mere licence to seize not coupled with an interest in the property was, it seems, at law revocable (see *Wood* v. *Leadbitter*, 13 M. & W., at p. 845) by the grantor: and such a licence has been held to have been revoked by a subsequent assignment to creditors, though such assignment might itself be invalid as against the trustee in bankruptcy: (*Carr* v. *Acraman*, 11 Ex. 566.) If the grantor become bankrupt before seizure the licence to seize is put an end to by the act of bankruptcy (*Thompson* v. *Cohen*, L. Rep. 7 Q. B. 527), unless the seizure be a protected transaction under sect. 94 of the Bankruptcy Act

1869: (*Re Waugh, ex parte Dicken*, 4 Ch. Div. 524; see also *post*, p. 26, notes (*e*) and (*f*).) §§ 3, 4.

Upon a mortgage of freehold, leasehold, or copyhold property, fixtures attached by the mortgagor to the property after the date of the mortgage pass, in the absence of special stipulations, to the mortgagee: (*Meux* v. *Jacobs*, L. Rep. 7 H. of L. 481.)

Sect. 4. *Interpretation of terms.*—In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers (*a*), declarations of trust (*b*) without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods (*c*), and other assurances (*d*) of personal chattels, and also powers of attorney (*e*), authorities, or licences to take possession of personal chattels as security for any debt (*f*), and also any agreement (*g*), whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents; that is to say, assignments for the benefit of the creditors (*h*) of the person making or giving the same, marriage settlements (*i*), transfers or assignments of any ship or vessel or any share thereof (*k*), transfers of goods in the ordinary course of business of any trade or calling (*l*), bills of sale of goods in foreign parts (*m*) or at sea, bills of lading, India warrants, warehousekeepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the

§ 4. possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented.

Distinguished Ex parte Cooper re Baum. 40 Ch. D. 282

This definition, being a definition "by which one thing is said to be another," is to be construed strictly: (per Pollock, C.B., *Allsop* v. *Day*, 7 H. & N. 457.)

(*a*) "*Transfers.*"—A transfer or assignment of a registered bill of sale need not be registered (see s. 10 (5): (*Re Shaw*, 25 W. R. 686.)

(*b*) "*Declarations of trust.*"—As to what amounts to a declaration of trust, as distinguished from an assignment, see *Baddeley* v. *Baddeley* (9 Ch. Div. 113). As to parol declarations of trust, see *Jones* v. *Lock* (L. Rep. 1 Ch. 25); *Ex parte Cohen, re Cohn* (38 L. T. Rep. N. S. 884).

(*c*) "*Inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods.*"—Under the Act of 1854 these were held not to be bills of sale, unless the property in the goods passed by the instrument: (*Allsopp* v. *Day*, 7 H. & N. 457; *Byerley* v. *Prevost*, L. Rep. 6 C. P. 144. But the authority of these cases has been much shaken by the recent case of *Ex parte Odell, re Walden* (39 L. T. Rep. N. S. 333, C. A.),

(*d*) "*Other assurances.*"—In *Ex parte Watson, re Love* (5 Ch. Div. 35), a document giving a right connected with the vendor's lien on goods in transit was held not to be an assurance requiring registration as a bill of sale.

(*e*) "*Powers of attorney.*"—A power of attorney is an authority to one person to do an act in the stead of another. The power must be given by deed (Salk. 9), and should be exercised in the lifetime of the grantor. See, however, *Bailey* v. *Collett* (18 Beav. 179); 22 & 23 Vict. c. 35, s. 26. When executed for a valuable consideration it is, in equity, not revocable: (*Pearson* v. *Amicable Insurance Office*, 27 Beav. 229; *Abbott* v. *Stratton*, 9 Ir. Eq. Rep 233.)

(*f*) "*Authorities or licences to take possession.*"—For the general law as to such authorities, see *Smart* v. *Sandars* (5 C. B. 895).

As to licences, see *Wood* v. *Leadbitter* (13 M. & W. 838; *Ex parte Hopcraft* (14 W. R. 168), *ante*, p. 24.

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In *Ex parte Crawcour, re Robertson* (9 Ch. Div. 419), A. agreed to hire furniture from B., and pay for the same by monthly instalments. On payment of the full sum the furniture was to become the property of A.: in the meantime it was to remain the property of B., who, in the event of nonpayment of any instalment, might seize and retake possession. It was held that, as no property in the furniture passed to A. until all the instalments were paid, the licence to seize did not amount to a bill of sale by him, and registration was unnecessary. Cf. *Re Blanshard* (8 Ch. Div. 601).

(*g*) "*Any agreement . . . by which a right in equity to any chattels shall be conferred.*"—This was not in the corresponding interpretation clause of the Act of 1854; but it seems to declare the law as settled by decisions under that Act. Thus in *Ex parte Mackay* (L. Rep. 8 Ch. 643) it was laid down that an agreement to give a bill of sale, if relied upon as an equitable assignment, must be registered—though *quâ* agreement it need not. So a letter of hypothecation operating as an equitable assignment, and not being an ordinary mercantile transaction (*Ex parte Conning*, L. Rep. 16 Eq. 414), was held to be a bill of sale within the meaning of the Act. As to what constitutes an equitable assignment, cf. *Ryall* v. *Rowles* (2 Wh. & Tud, L. C. 732); *Ex parte Montagu* (1 Ch. Div. 554); *Tebb* v. *Hodge* (L. Rep. 5 C. P. 73); *Ranken* v. *Alfaro* (5 Ch. Div. 786).

In *Brown* v. *Bateman* (L. Rep. 2 C. P. 272), by a building contract it was agreed (Art. 7) that "all *materials* which should have been brought upon the premises by B. for the purpose of erecting certain buildings should be considered as immediately attached to and belonging to the premises, and that no part thereof should be removed therefrom without A.'s consent;" and by Art. 8 it was further agreed that "in case B. should fail to proceed with the erection and completion of the houses, or any of them, it should be lawful for A. to enter upon and take possession of the land with *all bricks and other building materials* thereon for his and their own absolute use and benefit." It was held that Art. 7 gave A. an equitable interest in the *materials*, which was good as against an execution creditor without registration: (see *Blake* v. *Izard*, 16 W. Rep. 108; and *Ex parte Waugh*, 4 Ch. Div. 524; *Re Winter*, 8 Ch. Div. 225, which are cases under the Bankruptcy Act, 1869.)

With regard to equitable assignments made in the ordinary course of business, see *infra*, note (*l*).

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(*h*) "*Assignments for the benefit of creditors.*"—It is only assignments made for the benefit of *all* the creditors that come within this exception (*Reg.* v. *Creese*, L. Rep. 2 C. C. R. 105); but the deed need not have been signed by all (*General Furnishing Company* v. *Venn*, 2 H. & C. 153; *Johnson* v. *Osenton*, L. Rep. 4 Ex. 107); and the fact that some creditors have not elected to come in under a deed, of which they might have taken advantage, will not alter the case (*Ashford* v. *Tuite*, 7 Ir. C. L. Rep. 91). Cf. also *Wolverhampton Bank* v. *Marston*, 7 H. & N. 148.

(*i*) "*Marriage settlements.*"—Post-nuptial settlements are not within this exception: (*Fowler* v. *Foster*, 28 L. J. Q. B. 210; *Ashton* v. *Blackshaw*, L. Rep. 9 Eq. 510.) With regard to the validity of such settlements as against creditors, see *Freeman* v. *Pope* (L. Rep. 5 Ch. 538); and, as against the trustee in bankruptcy, if made by a trader, see the Bankruptcy Act, 1869, sect. 91.

(*k*) "*Transfers of ships.*"—See the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 57, 81, as to bills of sale of ships. A foreign ship is within the exception: (*Union Bank* v. *Lenanton*, 3 C. P. Div. 243.)

(*l*) "*Transfers of goods in the ordinary course of business.*"—In *Ex parte North-Western Bank* (L. Rep. 15 Eq. 69), a wool-broker in the habit of borrowing from a bank, by letter of hypothecation pledged certain wools to the bank as a security for advances. The warrants for the wools were not delivered; but a promise to deliver them the following morning had been added at the foot of the letter. It was held that the letter creating the equitable charge was within the exception, and did not require registration.

On the other hand, where traders, in consideration of goods being supplied to them on credit by brokers, signed a document, by which they gave the brokers an equitable charge on all their stock, and agreed to execute a transfer of the same, it was held that this document was a bill of sale, and not within the exception: (*Ex parte Conning, re Steele*, L. Rep. 16 Eq. 414.)

In the case of *Merchant Banking Company* v. *Spoffen* (Ir. L. Rep. 11 Eq. 586) the facts were as follows: B. held a quantity of linen, which S., in the course of trade, had transmitted to him to be bleached, subject to a lien to a bank for advances made to S. as against those goods. By deed made between S. and B. and the bank, S. transferred to the bank, as a security for all

moneys for the time being to be due to the bank by him, all his linens then with B.; and B. covenanted that he would hold those goods, and any others which might be from time to time substituted therefor, for the bank; and that the bank might enter on the premises and take possession of the goods. It was held that the deed was within the exception and need not be registered.

So an agreement giving a right connected with the vendor's lien on goods in transit has been held to be within this exception: (*Ex parte Watson, re Love*, 5 Ch. Div. 35.)

Cf. also *Brown* v. *Bateman* (L. Rep. 2 C. P. 272), a case arising under a builder's contract.

(*m*) "*Bills of sale of goods in foreign parts.*"—Bills of sale of goods situate in Scotland are within the exception: (*Coote* v. *Jecks*, L. Rep. 13 Eq. 597.)

Personal chattels.

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) (*a*) fixtures (*b*) and growing crops (*c*), but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter (s. 5) defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies (*d*), nor choses in action (*e*), nor any stock or produce upon any farm or lands (*f*) which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale.

The definition in the Act of 1854 was as follows: "The expression personal chattels shall mean goods, furniture, fixtures,

§ 4. and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate nor shares or interests in the stock, funds, &c."

Old and new definition compared.

The differences between the old and new definitions are chiefly these:

1. Under the Act of 1854 growing crops were not personal chattels (*Brantom* v. *Griffits*, 1 C. P. Div. 349; 2 C. P. Div. 212); under this Act they are, "if separately assigned or charged."

2. Under the old Acts "fixtures" were defined to be "personal chattels;" but they were only so, according to the cases, when the mortgagee had power to sever them from the land or building to which they were affixed, and sell them separately: (*Ex parte Barclay, re Joyce*, L. Rep. 9 Ch. 576.) By this Act "trade machinery" is to be deemed personal chattels; other fixtures only "when separately assigned or charged:" (see further as to this, ss. 5 and 7.)

3. The distinction drawn by this Act between "trade machinery" and other fixtures is new.

Personal chattels are so only for purposes of Act.

The articles here defined to be "personal chattels" are chattels only for the purposes of this Act, and not for all purposes. Thus fixtures (including trade machinery) are not chattels as between heir and executor (*Bain* v. *Brand*, 1 App. Ca. 762); nor as between vendor and vendee or mortgagor and mortgagee (*Meux* v. *Jacobs*, L. Rep. 7 H. of L. 481); nor are they goods and chattels within the meaning of the Statute of Frauds, s. 17 (*Lee* v. *Gaskell*, 1 Q. B. Div. 700); nor of the Bankruptcy Act, 1869, s. 15 (*Horn* v. *Baker*, 2 Sm. L. C. 215); nor are fixtures distrainable, though growing crops are (*Simpson* v. *Hartopp*, 1 Sm. L. C. 439; *Holland* v. *Hodgson*, L. Rep. 7 C. P. 328). So, such growing crops as are not emblements are an interest in land within the meaning of the Statute of Frauds; and crops of every description pass by a devise or conveyance of land (*Cooper* v. *Woolfit*, 2 H. & N. 122) as part of the land.

(*a*) "*When separately assigned or charged.*"—For the meaning of this expression see s. 7, note.

Fixtures what.

(*b*) "*Fixtures.*"—Fixtures are "things annexed to the freehold;" and things so annexed, even slightly, whether by nail, screw, or otherwise (*Mather* v. *Fraser*, 2 K. & J. 536), are considered as part of the land, unless the circumstances are such as to show that they were intended all along to continue

chattels; the onus of proof lying on those who contend they are chattels. But articles attached to the land by their own weight only are in general not considered as part of the land: (*Holland* v. *Hodgson,* L. Rep. 7 C. P. 335.) **§ 4.**

Thus the following articles, resting on, but not fixed to, the freehold, have been held to be not fixtures, but chattels: A granary on staddles (*Wiltshear* v. *Cottrell,* 1 E. & B. 674); a cistern (*Mather* v. *Fraser,* 2 K. & J. 559); the metal flooring of a mill (*Metropolitan Counties Society* v. *Brown,* 26 Beav. 454; *Huntley* v. *Russell,* 13 Q. B. 572); carpets nailed to the floor, and clocks fixed to the wall.

The following things have been held to be fixtures and not chattels: Tapestry, pictures in panels, frames filled with satin and attached to the walls, and also statues, figures, vases, and stone garden seats which were essentially part of the house or of the architectural design of the building or grounds, however fastened (*D'Eyncourt* v. *Gregory,* L. Rep. 3 Eq. 382); a threshing machine fixed by screws and bolts to four posts which were let into the earth (*Wiltshear* v. *Cotterill,* 1 E. & B. 674); a ladder and crane fixed by nails (*Wilde* v. *Waters,* 16 C. B. 637); tram plates and sleepers embedded in ballast (*Turner* v. *Cameron,* L. Rep. 5 Q. B. 306); a steam engine, boiler, haycutter, and malt mill, though fastened in a "quasi permanent" manner by means of bolts and nuts to walls or floors and for the purpose of steadying them only, and capable of removal without injury to the freehold (*Walmsley* v. *Milne,* 7 C. B. N. S. 115; *Longbottom* v. *Berry,* L. Rep. 5 Q. B. 123); an engine screwed to thick planks which lay on the ground (*Climie* v. *Wood,* L. Rep. 3 Ex. 257, 4 Ex. 328). See also *Rufford* v. *Bishop* (5 Russ. 354 n.); *Haley* v. *Hammersley* (7 Jur. N. S. 765); *Reg* v. *Lee* (L. Rep. 1 Q. B. 241); *Ex parte Astbury* (L. Rep. 4 Ch. 630).

In *Hellawell* v. *Eastwood* (6 Ex. 295) it was held that certain "mules" used for spinning cotton, some of which were fixed by screws to the wooden floor, and some by screws which had been sunk in the stone floor and secured by molten lead poured into them, were not "fixtures." But that case and *Hutchinson* v. *Kay* (23 Beav. 413) seem now of doubtful authority: (see *Holland* v. *Hodgson,* L. Rep. 7 C. P., at p. 337.)

The locks and keys of a house and the movable parts of fixed machinery are fixtures: (*Mather* v. *Fraser,* 2 K. & J. 559; *Bain* v. *Brand,* 1 App. Cas. 762.)

Fixtures then being things annexed to the freehold, the old and General

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rule as to fixtures.

general rule is that where a limited owner, whether for life or for years, having annexed anything to the freehold during his term, afterwards takes it away, he commits waste; but this rule has had several exceptions engrafted upon it: (*Elwes* v. *Mawe*, 2 Sm. L. C. 162.)

Questions as to fixtures.

The questions which arise as to the right to fixtures are principally between six classes of persons, viz. (1) heir and executor; (2) executor and remainderman, (3) landlord and tenant, (4) mortgagor and mortgagee, (5) successive mortgagees, (6) the trustee in bankruptcy and other parties.

1. As between heir and executor the old rule still in the main holds good: (*Fisher* v. *Dixon*, 12 Cl. & Fin. 312; *Bain* v. *Brand*, 1 App. Ca. 762.)

2. As to questions between executor and remainderman, see *Elwes* v. *Mawe* (2 Sm. L. C, 162).

Rule as between landlord and tenant.

3. As between landlord and tenant, the rule is, that the tenant may take away during his term (*Ex parte Stephens, re Lavies*, 7 Ch. Div. 127; *Ex parte Brook, re Roberts*, "Times," Dec. 13, 1878) such fixtures as he has himself put up for the purposes of trade, ornament, or domestic convenience, and in a minor degree fixtures put up for the purposes of agriculture (*Climie* v. *Wood*, L. Rep. 4 Ex. 328), provided the removal will cause little or no damage to the freehold (*Avery* v. *Cheslyn*, 3 A. & E. 75).

It is often difficult to decide what are tenant's fixtures and as such removable by him, and what are landlord's fixtures and not removable.

Tenant's fixtures.

The following articles have been held to be tenant's fixtures: Vats set up by a soapboiler (*Poole's case*, Salk. 368); furnaces, coppers, a fire-engine to work a colliery (*Lawton* v. *Lawton*, 3 Atk. 13); a varnish house (*Penton* v. *Robart*, 2 East, 88); Dutch barns (*Dean* v. *Allaley*, 2 Esp. 11); a hydraulic press (*Parsons* v. *Hind*, 14 W. Rep. 860); shop fittings, such as desks, shelves, and counters (*Moore* v. *Drinkwater*, 1 F. & F. 134); trade machinery (*Fisher* v. *Dixon*, 12 Cl. & Fin. 312; *Trappes* v. *Harter*, 2 Cr. & Mee. 153); articles for ornament or convenience, such as hangings and looking-glasses (*Beck* v. *Rebow*, 1 P. Wms. 94); tapestry and iron backs to chimneys (*Harvey* v. *Harvey*, Str. 1141); wainscot, fixed by screws, and marble chimney pieces (*Lawton* v. *Lawton*, 3 Atk. 15); cornices (*Avery* v. *Cheslyn*, 3 A. & E. 75); pumps (*Grymes* v. *Boweren*, 6 Bing. 437; see also *Colegrave* v. *Dios Santos*, 1 B. & C. 77; *Winn* v. *Ingleby*, 5 B. & A. 625; *Bishop* v. *Elliott*, 10 Ex. 496, 11 Ex.

113; Woodfall, p. 591). So nurserymen may remove trees, shrubs, and other produce planted with a view to sale (*Penton* v. *Robart*, 2 East, 91); though ordinary tenants may not (*Empson* v. *Soden*, 4 B. & Ad. 656). But a conservatory erected on a brick foundation fifteen inches deep, and attached in an elaborate manner to a dwelling-house, though an ornamental fixture (*Buckland* v. *Butterfield*, 2 Brod. & Bing. 54; *Jenkins* v. *Gething*, 2 J. & H. 520); a building, built of brick with brick foundations let into the soil, though built for the sole purposes of trade (*Whitehead* v. *Bennett*, 27 L. J. Ch. 474); and a beast house, carpenter's shop, fuel house, cart house, pump house, and fold house wall fixed for the purposes of agriculture (*Elwes* v. *Mawe*, 3 East, 38), have all been held not removable by the tenant. **§ 4.**

The tenant's right to remove agricultural fixtures has, however, been extended by statute (14 & 15 Vict. c. 25, s. 3) to such fixtures as he has put up with the consent *in writing* of the landlord for the time being, and still further by the Agricultural Holdings Act, 1875 (ss. 53-58).

The right to remove fixtures as between landlord and tenant may be further extended or limited by special custom (*Lawton* v. *Lawton*, 3 Atk. 16, n.; *Davis* v. *Jones*, 2 B. & A. 165; *Trappes* v. *Harter*, 4 Tyr. 603); or by agreement (*Foley* v. *Addenbrooke*, 13 M. & W. 174; *Dumergue* v. *Rumsey*, 2 H. & C. 777; see Woodfall, p. 596).

(4) As between mortgagor and mortgagee the old rule obtains; and a mortgage, whether legal (*Hitchman* v. *Walton*, 4 M. & W. 409), or equitable (*Ex parte Astbury*, L. Rep. 4 Ch. 630), of freehold, copyhold (*Ex parte Reynal*, 2 Mont. D. & De G. 443), or leasehold property passes all fixtures annexed thereto, including trade fixtures (*Holland* v. *Hodgson*, L. Rep. 7 C. P. 328), and growing crops (*Cooper* v. *Woolfit*, 2 H. & N. 122), whether specified in the instrument or not, and whether they have been annexed before or after the date of the mortgage (*Meux* v. *Jacobs*, L. Rep. 7 H. of L. 481). Rule as between mortgagor and mortgagee.

In the case of a mortgage of land by a limited owner—as, *e.g.*, by a lessee—trade and tenant's fixtures pass absolutely to the mortgagee, if the mortgage be by way of absolute assignment of the term (*Meux* v. *Jacobs*, L. Rep. 7 H. of L. 481); but they do not pass if the mortgage be by way of underlease (*Hawtrey* v. *Butlin*, L. Rep. 8 Q. B. 290; *Ex parte Barclay, re Joyce*, L. Rep. 9 Ch. 576), unless there is a clear intention to be gathered from the mortgage deed to convey an absolute interest in the fixtures,

§ 4. as well as the limited interest in the land: (see *Ex parte Daglish, re Wilde,* L. Rep. 8 Ch. 1072; *Re Eslick, ex parte Alexander,* 4 Ch. Div. 503; *Ex parte Trethowan, re Tweedy,* 5 Ch. Div. 559; *Ex parte Brown, re Reed,* 9 Ch. Div. 389.)

Rule as between successive mortgagees.

(5) As between successive mortgagees, a subsequent mortgagee has no better title than his mortgagor; and therefore, on a mortgage, legal or equitable, of freehold, leasehold, or copyhold property, a subsequent mortgagee has no title to the fixtures as against a first mortgagee, even though such fixtures, or some of them, have been affixed after the date of the first mortgage: (see *Meux* v. *Jacobs,* L. Rep. 7 H. of L. 483, and cases cited above in this note.)

As between mortgagee and trustee in bankruptcy.

(6) As between a mortgagee and the trustee in bankruptcy of the mortgagor, the trustee has no title, except as against the holder of an unregistered bill of sale of "trade machinery," or by which fixtures have been "separately assigned or charged."

No fixtures, unless severed, are deemed to be chattels in the order and disposition of a bankrupt within the meaning of sect. 15 (5) of the Bankruptcy Act, 1869 (*Horn* v. *Baker,* 2 Sm. L. C. 205); notwithstanding the decision in *Hellawell* v. *Eastwood* (6 Ex. 295), in which case, it would seem, the principles of law were not correctly applied to the facts (*Holland* v. *Hodgson,* L. Rep. 7 C. P., at p. 337).

(*c*) "*Growing crops.*"—Under the Act of 1854 it was held that growing crops were not "personal chattels" within the meaning of the Act: (*Branton* v. *Griffits,* 1 C. P. Div. 349; 2 C. P. Div. 212.)

For the general law as to "growing crops" see Leake on Contracts, p. 250; Williams on Executors, 707.

(*d*) "*Shares or interests in the . . . . property of incorporated or joint-stock companies.*"—Notwithstanding these words it was in *Re Marine Mansions Company* (L. Rep. 4 Eq. 602) assumed, though not actually decided, that debentures of a company by which they pledged "the property belonging to us for the time being during the subsistence of the debenture, with all the buildings and stock on and connected with our said property, and all the receipts and revenues to arise therefrom," were bills of sale of personal chattels within the meaning of the Act of 1854. See also *Shears* v. *Jacob* (L. Rep. 1 C. P. 513); *Deffell* v. *White* (L. Rep. 2 C. P. 144); *Re Hackney Newspaper Company* (3 Ch. Div. 669).

(*e*) "*Chose in action.*"—A share and interest in a partner-

ship is a chose in action, and within this exception: (*Re Bainbridge, ex parte Fletcher,* 8 Ch. Div. 218.) **§ 4.**

(*f*) "*Nor any stock or produce, etc.*"—As to dealings with such stock or produce see 56 Geo. 3, c. 50, s. 11: (*Wilmot* v. *Rose,* 3 Ell. & B. 563; *Hawkins* v. *Walrond,* 1 C. P. Div. 280.)

Farming stock and produce not subject to any such restrictions upon removal as are mentioned in this section are, it would seem, personal chattels within the meaning of the Act.

As to a mortgage of sheep, see *Webster* v. *Power* (L. Rep. 2 P. C. 69).

Apparent possession.

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person:

"Prescribed" means prescribed by rules made under the provisions of this Act.

As to this clause see s. 8. The words "notwithstanding that formal possession thereof may have been taken by or given to any other person" should be taken as qualifying what precedes them; and the clause means that chattels shall be deemed in the "apparent possession" of the grantor (1) so long as they remain on premises actually occupied by him, and (2) if formal possession only has been taken by or given to any other person. Where something more than formal possession has been taken the clause does not apply. See *Gough* v. *Everard* (2 H. & C. 12); *Ex parte Lewis* (L. Rep. 6 Ch. 629). What that something more is the judges have not defined; but it must be something done which takes the chattels plainly out of the apparent possession of the debtor in the eyes of everybody who sees them. Thus, if the grantee takes possession, and remains in the house, but allows the grantor and his family to use the goods, they remain in the apparent possession of the grantor: (*Ex parte Jay,* L. Rep. 9 Ch. 697; *Ex parte Hooman,* L. Rep. 10 Eq. 63.)

But if the grantee being in possession interferes with the use

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of the goods by the grantor (*Smith* v. *Wall,* 18 L. T. Rep. N. S. 182; *Davies* v. *Jones,* 10 W. R. 779); or removes them; or advertises them for sale as goods of the grantor sold under a bill of sale (*Emanuel* v. *Bridger,* L. Rep. 9 Q. B. 286), the goods are taken out of the apparent possession of the grantor.

Occupation of premises.

If the grantor of a bill of sale does not personally occupy the premises where the goods comprised in it are placed, the goods are not in his apparent possession (*Gough* v. *Everard,* 2 H. & C. 1), even though he is the tenant—actual *de facto* occupation being necessary (*Robinson* v. *Briggs,* L. Rep. 6 Ex. 1). But if the grantor does occupy the premises it makes no difference that he does so in the capacity of servant only, and is allowed by the grantee the use of the goods as part of his salary: (*Pickard* v. *Marriage,* 1 Ex. Div. 364.)

Goods in the actual possession of the sheriff may still be in the apparent possession of the grantor: (*Ex parte Mutton,* L. Rep. 14 Eq. 178.)

Constructive possession.

If a mortgagee has, by the terms of his deed, a right to take possession, his taking possession of one of the chattels comprised in the deed is in some cases held to amount, in construction of law, to possession of all. But the possession of a wrongdoer will not be extended beyond his actual physical possession; and the fact that a grantee is entitled to and has demanded possession does not take the goods out of the possession of the grantor within the meaning of this Act (*Ex parte Redferne,* 19 W. Rep. 1058; *Gough* v. *Everard,* 2 H. & C. 1; *Ex parte Fletcher, re Henley,* 5 Ch. Div. 809; *Ancona* v. *Rogers,* 1 Ex. Div. 285); though it exempts them from the operation of the reputed ownership clause of the Bankruptcy Act, 1869 (*Ex parte Harris,* L. Rep. 8 Ch. 48).

Possession by bailee.

Goods in the possession of a bailee to hold on account of the grantor, and so not in the *apparent* possession of the grantor, are still in his possession within the meaning of the Act (*Ancona* v. *Rogers,* 1 Ex. Div. 292); but not if the bailee has agreed to hold the goods on account of a third party (*Merchant Banking Company* v. *Spoffen,* Ir. L. Rep. 11 Eq. 587). But a sheriff is not deemed in possession of goods of the grantor which are in the hands of a bailee unless and until he has obtained actual physical possession: (*Ex parte Warren,* L. Rep. 10 Ch. 222.)

By receiver.

Formal possession taken under an unregistered bill of sale by a receiver appointed by the court, subject to his giving security, is of no avail as against an execution creditor who seizes before

the security is given: (*Edwards* v. *Edwards*, 2 Ch. Div. 291; and see *Taylor* v. *Eckersley*, 5 Ch. Div. 740.) But if a receiver, duly appointed, is once in possession it is contempt of court for the holder of a valid bill of sale to oust him from possession of the goods (*Ex parte Cochrane*, L. Rep. 20 Eq. 282), even if the holder of the bill of sale has taken possession first (*Re Fells*, 4 Ch. Div. 509); he should make an application to the court for leave to exercise his legal rights (*Ex parte Cochrane*, at p. 288).

Apparent possession of growing crops.

With regard to growing crops, it has been laid down by some judges that, as long as the crops remain on premises which are in the occupation of the grantor, they cannot be otherwise than in his apparent possession: (*Sheridan* v. *Macartney*, 11 Ir. C. L. Rep. 506; *Brantom* v. *Griffits*, 1 C. P. Div. 357, per Archibald, J.) The correctness of this view has, however, been doubted (*Gough* v. *Everard*, 2 H. & C., at p. 13); and see *Ex parte Arnison* (L. Rep. 3 Ex. 56), from which case it appears that, after possession has been once taken, the putting up a public notice or the adoption of some similar precaution is enough to take growing crops out of the apparent possession of the grantor (see per Kelly, C.B., at p. 61).

Sect. 5. *Application of Act to trade machinery.*—From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

"Trade machinery" (*a*) means the machinery used in or attached to any factory or workshop:

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam-engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and

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other fixed appurtenances which transmit the action of the motive-powers to the other machinery, fixed and loose; and

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" (*b*) means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(*a.*) In or incidental to the making any article (*c*) or part of an article; or

(*b.*) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(*c.*) In or incidental to the adapting for sale any article.

Trade machinery, irrespectively of the Bills of Sale Acts, is of two kinds—fixtures and chattels. The following remarks apply only to such trade machinery as are fixtures.

Trade machinery under Act of 1854.

By the Bills of Sale Act, 1854, it was provided that the expression "personal chattels" should include fixtures for the purposes of that Act. But for other purposes fixtures were still deemed part of the land, and they passed by a mortgage of the land, without being mentioned, to the mortgagee; and it was held that, when the land passed by the same instrument, registration so far as regards the fixtures was necessary only in those cases where the mortgagee had power as against his mortgagor to sever the fixtures from the land and sell them separately: (*Ex parte Daglish,* L. Rep. 8 Ch. 1072; *Ex parte Barclay,* L. Rep. 9 Ch. 576.) See *post,* pp. 43, 44.

Under the Act of 1854 "trade machinery" was subject to the same rules as other fixtures. The Act of 1878 draws a distinc-

tion between "trade machinery" and other fixtures, and provides as follows: **§ 5.**

(1) From and after the commencement of this Act, trade machinery shall, for the purposes of this Act, be deemed to be personal chattels (s. 5). Under Act of 1878.

(2) The expression "personal chattels" shall mean (when separately assigned or charged) fixtures (s. 4); and by sect. 7, after limiting the meaning of the words "separately assigned or charged," the Act provides that "the same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court which shall take place or be issued after the commencement of this Act."

It would seem that the result of these sections, so far as regards "trade machinery," in questions arising after the 1st Jan. 1879 (see sect. 7), is as follows:

1. If the instrument has been executed *before* the 1st Jan. 1879, then, as against trustees and assignees in bankruptcy and execution creditors, "trade machinery" is to be deemed "personal chattels" only when "separately assigned or charged;" and registration of such an instrument, so far as regards the "trade machinery," is to be necessary in the same cases only as the registration of instruments comprising other fixtures is by this Act made necessary.

2. If the instrument is executed *after* the 1st Jan., 1879, the "trade machinery" is to be deemed "personal chattels" for the purposes of this Act; and in general, whether an interest in the land pass by the same instrument or not, the instrument must be registered.

It is, however, perhaps open to doubt whether a mere mortgage of land in fee (*Mather* v. *Fraser*, 2 K. & J. 536), or by way of underlease, in the case of leaseholds (*Ex parte Barclay*, L. Rep. 9 Ch. 576), by which no power is given to the mortgagee to sever the "trade machinery" and sell it separately, is "a mode of disposition of trade machinery which would be a bill of sale as to any *other* chattels;" and whether in such cases registration will be necessary. See *post*, pp. 43, 44.

(*a*) "*Trade machinery.*"—For a detailed account of various kinds of trade machinery, see *Longbottom* v. *Berry* (L. Rep. 5

§§ 5, 6. Q. B. 426). Cf. also *Trappes* v. *Harter* (2 Cr. & M. 153); *Foley* v. *Addenbrooke* (13 M. & W. 174).

(*b*) "*Factory or workshop.*"—See and compare the definition in the Factory and Workshop Act, 1878 (40 & 41 Vict. c. 16), s. 93.

As to the meaning, under the Factory Acts, of "factory," see *Kent* v. *Astley* (L. Rep. 5 Q. B. 19); *Redgrave* v. *Lee* (L. Rep. 9 Q. B. 363). As to "workshop," see *Beadon* v. *Parrott* (40 L. J. M. C. 200).

(*c*) "*Article.*"—The word "article" does not include such a thing as a ship: (*Palmer's Shipbuilding Company* v. *Chaytor*, L. Rep. 4 Q. B. 209.)

Sect. 6. *Certain instruments giving powers of distress to be subject to this Act.*—Every attornment (*a*), instrument, or agreement, not being a mining lease, whereby a power of distress (*b*) is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession (*c*), shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

The provisions of this section are entirely new.

(*a*) "*Attornment.*"—"Attornment" means properly "the acknowledgment by the tenant of a new lord" (Co. Litt. 309 a); and, under the old feudal law, until attornment the relation of lord and tenant did not subsist between the alienee of a seignory or reversion and the tenant. Since 4 Anne, c. 16, and 11 Geo. 2, c. 19, however, an attornment is seldom made, except sometimes to mortgagees, in cases where the mortgagor is in actual possession of the property mortgaged.

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The effect of such a clause is to give the mortgagee the same remedy by distress as a landlord has for recovering rent in arrear, without incurring either the responsibilities of a mortgagee in possession or having recourse to his power of sale.

The attornment clause may be framed so as to secure the repayment either of the interest made payable under the mortgage or of the principal: (*Pinkhorn* v. *Souster*, 8 Ex. 763; *Jolly* v. *Arbuthnot*, 4 De G. & J. 224.) But if the parties wish the security to cover the principal, the intention to do so must be clearly expressed, otherwise the attornment clause will be held to be a security for the payment of the interest only: (*Hampson* v. *Fellows*, L. Rep. 6 Eq. 575.)

In a recent case under the Act of 1854, a mortgage to secure the sum of £55,000 and interest, given by mortgagors in possession, contained a provision that the mortgage should continue for five years if the interest should be regularly paid, and the mortgagors should not become bankrupt, and also an attornment clause whereby the mortgagors attorned tenants to the mortgagees at the rent of £20,000 a year. The mortgagors having become bankrupt, the mortgagees claimed under the attornment to distrain for a year's rent. But it was held that the attornment clause was a mere device for making the chattels subject to the mortgage without a bill of sale, and, being a fraud upon the bankruptcy laws, was void: (*Re Thompson, ex parte Williams*, 7 Ch. Div. 138; see also *Re Stockton Ironworks Company*, W. N. 1878, p. 239; *Morton* v. *Woods*, L. Rep. 4 Q. B. 293.)

(*b*) "*Power of distress.*"—A mere power of distress, whereby no tenancy is created between the mortgagor and mortgagee, does not, it seems, attach itself to the land, so as to bind any goods which may be thereon, but binds only the goods of the mortgagor himself. Such a power is therefore inferior in efficiency to an attornment: (see Davidson Conv. Prec. vol. II., pt. ii., p. 647.)

(*c*) "*The mortgagee, being in possession.*"—It is not perfectly obvious what is sufficient to constitute the possession here intended; and whether, though the mortgagor is in the actual occupation of the land, the mortgagee may not in some cases be "in possession" within the meaning of this section.

Thus in the case of an ordinary tenancy for a term, though the tenant is in actual occupation, yet "he has not the feudal

§§ 6, 7. possession or freehold in himself; but his possession, like that of a bailiff or servant, is the possession of his landlord:" (see Williams on Real Property, c. vii. p. 141.) And by the Statute of Uses it is enacted that the person who has the use is to be "deemed and adjudged in lawful seisin, estate, and *possession* of and in the land." It would seem to follow from this that, by virtue of an ordinary mortgage in fee, the mortgagee is "in possession" of the land mortgaged, and that he is so *à fortiori* where a tenancy is created, as by an attornment clause.

It may further be observed that where the land is not in hand a notice to the tenants by the mortgagee to pay their rents to him constitutes him "mortgagee in possession" in the usual sense of the expression: (*Simmins* v. *Shirley*, 6 Ch. Div. 173; *Lows* v. *Telford*, 1 App. Ca. 414.) And as the attornment clause appears to be equivalent to a notice to the tenant, who in this case is the mortgagor, to pay his rent to the mortgagee, it would seem that from this point of view also the effect of an attornment clause is to constitute the mortgagee "mortgagee in possession."

If this view is correct, the effect of the section will be that where a tenancy is created between mortgagor and mortgagee, as by an attornment, the instrument need not be registered if "a fair and reasonable rent" is reserved; but that where it is intended to secure more than a fair and reasonable rent by such a clause (*Hampson* v. *Fellows*, L. Rep. 6 Eq. 575; *Re Thompson*, 7 Ch. Div. 136), registration is necessary under this Act.

The subject, however, is obscure, and until the point has been actually decided it would be unsafe to rely upon the efficacy of an attornment clause as against trustees in bankruptcy and execution creditors of the mortgagee, unless the instrument is registered; and where a mere power of distress is given, that precaution will be still more advisable.

See, as to the relation which exists between mortgagor and mortgagee, *Jolly* v. *Arbuthnot* (4 De G. & J., at p. 235); and as to certain instruments which operate as a re-demise by mortgagee to mortgagor, *Keech* v. *Hall* (1 Sm. L. C. 584); and see Fisher on Mortgages, p. 444.

Sect. 7. *Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.*—No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by

reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person. § 7.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

This section is new. It does not apply to "trade machinery" included in instruments executed after the 1st Jan. 1879: (see s. 5.)

A mortgage, whether legal or equitable (*Ex parte Astbury*, L. Rep. 4 Ch. 630), of freehold, copyhold (*Ex parte Reynal*, 2 Mont. D. & De G. 443), or leasehold property, passes all fixtures annexed thereto, without their being mentioned, and whether they were annexed before or after the date of the mortgage (*Meux* v. *Jacobs*, L. Rep. 7 H. of L. 481).

Construction of deeds comprising fixtures under Act of 1848.

Under the Bills of Sale Act, 1854, it was held, in the case of mortgages of land or a building together with the fixtures annexed thereto, that although the mortgagor remained in possession, the instrument, so far as regards the fixtures, did not require registration unless the mortgagee had, as between himself and the mortgagor, power to sever the fixtures and sell them separately from the land (*Ex parte Barclay*, L. Rep. 9 Ch. 576); but, if the mortgagee had such a power, registration was necessary as against the trustee in bankruptcy, or an execution creditor of the mortgagor (*Ex parte Daglish*, L. Rep. 8 Ch. 1072), though it was unnecessary as against a puisne incumbrancer (*Meux* v. *Jacobs*, L. Rep. 7 H. of L. 481).

§ 7. Under the Act of 1854, if no power to sever the fixtures was expressly given to the mortgagee by the instrument, such a power was inferred so far as regards the trade fixtures, in the following cases:

Effect of assignment by separate words under Act of 1854.

(1) On a mortgage of a leasehold interest in land or a building by way of absolute assignment of the term; as the tenant's or trade fixtures pass absolutely by such an instrument: (*Ex parte Daglish*, L. Rep. 8 Ch. 1072, overruling *Boyd* v. *Sharrock*, L. Rep. 5 Eq. 72; *Hawtrey* v. *Butlin*, L. Rep. 8 Q. B. 290; *Ex parte Brown*, 9 Ch. Div. 389.)

(2) On a mortgage of such a leasehold interest by way of underlease, if by the same instrument the trade fixtures were assigned absolutely: (*Fenwick* v. *Begbie*, L. Rep. 8 Ch. 1075 n.; *Re Eslick*, 4 Ch. Div. 504.)

(3) An intention to confer such a power was sometimes inferred from the fact that the fixtures, though they would have passed by the mere mortgage of the land, were also expressly specified in the *testatum*, or assigned by a separate *testatum*: (see *Waterfall* v. *Penistone*, 6 E. & B. 876; *Re Trethowan, ex parte Tweedy*, 5 Ch. Div. 559; *Trappes* v. *Harter*, 2 Cr. & Mee. 153.) But those were cases decided on their own peculiar circumstances (*Walmesley* v. *Milne*, 7 C. B. N. S. 134); and such an inference was not a necessary, or, in general, a proper inference (see *Mather* v. *Fraser*, 2 K. & J., at p. 553); and in *Ex parte Daglish*, L. Rep. 8 Ch., at p. 1083), Mellish, L.J., said: "I cannot think we ought to hold it to make any real difference whether there are two *testatums* or whether there is only one; nor do I think it ought to make any difference that there is a nominal demise of the fixtures in the conveyance. What the mortgagee has a right to do is precisely the same in both cases."

Registration when unnecessary under Act of 1854.

But no power to sever trade or other fixtures was inferred:

(1) In the case of a mortgage in fee (*Mather* v. *Fraser*, 2 K. & J. 536); nor

(2) In the case of a mortgage of leaseholds by way of underlease; as by such a mortgage the property in the fixtures does not pass to the mortgagee: (*Hawtrey* v. *Butlin*, L. Rep. 8 Q. B., at p. 293; *Ex parte Barclay, re Joyce*, L. Rep. 9 Ch. 576.)

Under Act of 1878.

The result of this section, having regard to the marginal note, seems to be that registration, as regards growing crops and fixtures other than "trade machinery," will no longer be

necessary when any *freehold* or *leasehold* interest in the land passes by the same instrument. But, until there has been a decision on the point, it is not quite certain whether the exemption is or is not applicable to instruments framed like those in *Ex parte Daglish* (L. Rep. 8 Ch. 1072), *Hawtrey* v. *Butlin* (L. Rep. 8 Q. B. 290), and other cases where the whole interest in the trade fixtures is conveyed, but not the whole interest in the term; nor whether it applies to copyholds.

As to instruments including "trade machinery:" (1), where the instrument is executed before the 1st Jan. 1879, the rule by this section made applicable to other fixtures seems to apply; but where (2) the instrument is executed after the 1st Jan. 1879, "trade machinery" is to be deemed "personal chattels:" (see s. 5 and note.)

Sect. 8. *Avoidance of unregistered bill of sale in certain cases.*—Every bill of sale to which this Act applies shall be duly attested (*a*) and shall be registered under this Act, within seven (*b*) days after the making or giving thereof, and shall set forth the consideration (*c*) for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale (*d*) under the law relating to bankruptcy or liquidation (*e*), or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorising the seizure of the chattels of any person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void (*f*) so far as regards the property in or right to the possession of any chattels comprised in such bill of sale, which, at or after the time of filing the petition for bankruptcy or liquidation (*g*), or of the execution of such assignment, or of

§ 8. executing such process (as the case may be), and after the expiration of such seven days (*h*) are in the possession (*i*) or apparent possession (*k*) of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

This section lays down the requisites for a valid bill of sale, and points out as against what persons, as regards what chattels, and at what time, a bill of sale which fails to comply with those requisites, or any of them, is to be deemed fraudulent and void under this Act.

Old and new law compared.

As regards the validity of bills of sale, this Act introduces the following changes (see s. 1 of the Act of 1854):

1. Bills of sale must be duly attested.
2. They must be registered within seven days; not twenty-one days, as heretofore.
3. They must set forth the consideration.
4. The time at which they are to be deemed void as against the trustee in bankruptcy is "the time of filing the petition," instead of the time of the act of bankruptcy; and
5. By section 10: "In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of their date respectively, as regards such chattels."
6. The order and disposition clause has no application to bills registered under this Act (s. 20).

Bills of sale when void under this Act.

A bill of sale is fraudulent and void under this Act unless (1) it is duly attested and (2) duly registered, and (3) it sets forth the consideration for which it is made.

If those requisites, or any of them, are not complied with, the bill is void, but not until the expiration of seven days after it is made, and then only (1) as against certain persons, and (2) as regards certain chattels.

After the expiration of the seven days it is void;

(i.) As against trustees in bankruptcy, so far as regards chattels which at or after the time of filing the petition are in the possession or apparent possession of the grantor.

(ii.) As against assignees under assignments for the benefit of creditors, so far as regards any chattels which at or

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after the time of the execution of such assignment are in the possession or apparent possession of the grantor.

(iii.) As against execution creditors, so far as regards any chattels which at or after the time of the execution are in the possession or apparent possession of the grantor.

A bill of sale duly registered under this Act is, however, still liable to be postponed to another bill of sale of the same chattels registered before it (s. 10).

But a bill of sale is not void under this Act by reason only of not having been registered :

In what cases valid though unregistered.

(i.) If possession has been taken of the effects comprised in it before the expiration of the seven days (*Banbury* v. *White*, 2 H. & C. 300); nor

(ii.) Even when possession has not been taken is it void,

(1) As between grantor and grantee (*Barker* v. *Aston*, 1 F. & F. 192; *Reg.* v. *Creese*, L. Rep. 2 C. C. R. 109); nor

(2) As against the holder of a subsequent unregistered bill of sale (*Richards* v. *James*, L. Rep. 2 Q. B. 285); nor

(3) As against the unsecured creditors of an insolvent estate (*Re Knott*, 7 Ch. Div. 549, n. (1); but see the Judicature Act, 1875, s. 10, and *Re Printing and Numerical Company*, 8 Ch. Div. 535); nor

(4) (Before the Judicature Act, 1875, s. 10) as against the liquidator of a company: (*Re Marine Mansions Company*, L. Rep. 4 Eq. 601; but see now *Re Printing and Numerical Company*, 8 Ch. Div. 535; *Re Stockton Ironworks Company*, W. N. 1878, p. 239.)

As to the cases in which a bill of sale, which is valid under this Act, may be void, see the end of this note, p. 51.

(*a*) "*Duly attested.*"—*i.e.*, by a solicitor (see sect. 10). Under the Act of 1854 attestation was unnecessary: (*Deffell* v. *Miles*, 15 L. T. Rep. N. S. 293.)

(*b*) "*Seven days.*"—In the Act of 1854 "twenty-one days." The seven days are reckoned exclusively of the day of execution. Thus where a warrant of attorney (see sect. 10 (2)) was executed on the 9th December and filed on the 30th, it was held to be in time (twenty-one days): (*Williams* v. *Burgess*, 12 A. & E. 635.)

(*c*) "*And shall set forth the consideration.*"—This provision is not in the Bills of Sale Act, 1854; but the Stamp Act, 1870 (33 & 34 Vict. c. 97), sect. 10, provides that "all the facts and cir-

§ 8. cumstances affecting the liability of an instrument to *ad valorem* duty or the amount of the *ad valorem* duty with which any instrument is chargeable are to be fully and truly set forth in the instrument."

Effect of omission or misstatement of consideration.

Under the Stamp Act the omission to set forth the consideration does not render the deed invalid, it only subjects the parties to a penalty of £10 in the case of fraud: (see *Robinson* v. *Macdonnell*, 5 M. & S. 228; *Duck* v. *Braddyl*, 13 Price 453; *Doe* v. *Lewis*, 10 B. & C. 673.) And in general, if a deed do not state the consideration or do not state it completely, the parties may prove the consideration, if required, by extrinsic evidence, provided it be not inconsistent with the deed: (*Llanelly Railway* v. *London and North-Western Railway*, L. Rep. 8 Ch. 955; Leake on Contracts, p. 607.) It is not inconsistent with the deed to prove a larger consideration than that mentioned (*Clifford* v. *Turrill*, 1 Y. & C. Ch. 138). To state a larger consideration than the real one is *primâ facie* fraudulent, but it has been held under the Bills of Sale Act, 1854, that the insertion in a bill of sale knowingly of a wrong sum does not necessarily invalidate the security as against creditors, if it be done without fraud, and with the intention of making the security available only to the extent of the sum actually due: (*Biddulph* v. *Goold*, 11 W. R. 882; cf. *Ex parte Collins*, L. Rep. 10 Ch. 367.)

If therefore the consideration for which a bill of sale is given is not set forth at all, or is incompletely set forth, or is exaggerated, without any fraudulent intention, the bill, though perhaps void under this Act as against trustees and assignees in bankruptcy and execution creditors of the grantor, seems not to be on that account invalid as between the parties, or as against other mortgagees of the same chattels, and if subject to the Bills of Sale Act, 1854, to be valid as against the world.

(*d*) *"Of the person whose chattels are comprised in such bill of sale."*—An unregistered bill of sale is void on the bankruptcy of the real *owner* of the chattels; and it makes no difference that the grantee has advanced his money in the *bonâ fide* belief that the chattels belonged to a third party: (*Richards* v. *Johnston*, 4 H. & N. 660; see also *Low* v. *M'Gill*, 12 W. R. 826.)

If the bill is made by joint tenants, one of whom becomes bankrupt, it is void as against the trustee only to the extent of such bankrupt's moiety, even if the other moiety has been assigned to the bankrupt subsequently to the execution of the bill of sale: (*Ex parte Brown, re Reed*, 9 Ch. Div. 389.)

(*e*) "*Under the law relating to bankruptcy or liquidation.*"— In *Re Marine Mansions Company* (L. Rep. 4 Eq. 601) it was held that an unregistered bill of sale given by a company was not void as against the liquidator of a company. § 8.

But it is doubtful if that decision still holds good. For the Judicature Act, 1875, sect. 10, provides that, "in the administration by the court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding-up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities, and the costs of winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt."

And by the Bankruptcy Act, 1869, sect 16, sub-sect. 5, a secured creditor is defined to mean "any creditor holding any mortgage, charge, or lien on the bankrupt's estate, or any part thereof, as security for the debt due to him."

In *Re Knott* (7 Ch. Div. 549 n. (1) it was held that an unregistered bill of sale was good as against the unsecured creditors of a testator's estate which was being administered by the court, and was insufficient for the payment of the testator's debts, and that the rules in bankruptcy did not apply.

But in *Re Printing and Numerical Company* (8 Ch. Div. 535). Jessel, M.R., at p. 538, said: "As I read the section, the respective rights of the secured and unsecured creditors of a company in liquidation are the same as under the law of bankruptcy;" and he held that the rule in bankruptcy (Bankruptcy Act, 1869, s. 87) by which an execution creditor for more than £50 loses the benefit of his execution if the sheriff within fourteen days after a sale has notice of bankruptcy, applies to a company in liquidation. And this view was adopted by Bacon, V.C., in *Re Stockton Ironworks Company* (W. N. 1878, p. 239).

(*f*) "*Shall be deemed fraudulent and void.*"—In the Act of 1854 the corresponding words were "shall . . . be null and void to all intents and purposes whatsoever;" and accordingly it was held that if an unregistered bill of sale was avoided by an execution, it was void as against a subsequent registered bill of

§ 8. sale, which was good as against the execution creditor: (*Richards* v. *James*, L. Rep. 2 Q. B. 285.)

The doctrine of notice (as to which see *Le Neve* v. *Le Neve* (2 Wh. & Tud. L. C. 32) seems to have no application to this Act; and it has been held that the fact that an execution creditor was, at the time when his debt was contracted, aware that his debtor had given a bill of sale of chattels, does not prevent the creditor from availing himself of the objection that it has not been registered: (*Edwards* v. *Edwards*, 2 Ch. Div. 291.)

For the persons as against whom a bill of sale may be void under this Act, see the beginning of this note.

(*g*) "*At or after the time of filing the petition for bankruptcy or liquidation.*"—In the Act of 1854 the corresponding words are: "At or after the time of such bankruptcy or of filing the insolvent's petition in such insolvency," which was held to mean the time of the act of bankruptcy: (*Ex parte Attwater, re Turner*, 5 Ch. Div. 27.)

(*h*) "*Such seven days.*"—The seven days are reckoned exclusively of the day of execution: (*Williams* v. *Burgess*, 12 A. & E. 635.)

(*i*) "*Possession.*"—Goods of the grantor, which are in the hands of a bailee to hold on account of the grantor, are in the possession of the grantor within the meaning of the Act, unless and until actual physical possession thereof has been taken by some other person (*Ex parte Warren*, L. Rep. 10 Ch. 222; *Ancona* v. *Rogers*, 1 Ex. Div. 285); but if the bailee holds the goods on behalf of a third party, the goods are no longer in the possession, apparent or otherwise, of the grantor (*Merchant Banking Company* v. *Spoffen*, Ir. L. Rep. 11 Eq. 587).

Though the sheriff may have taken and be in possession of goods of the grantor, they may still be in the *apparent* possession of the grantor: (*Ex parte Mutton, re Cole*, L. Rep. 14 Eq. 178.)

As to what amounts to possession by a receiver or other officer of the court, see *Edwards* v. *Edwards* (2 Ch. Div. 291); *Taylor* v. *Eckersley* (5 Ch. Div. 740). And as to the proper course to be adopted by a bill of sale holder who claims a better title than the receiver in possession, see *Ex parte Cochrane* (L. Rep. 20 Eq. 282).

(*k*) "*Apparent possession.*"—As to the meaning of this expression, see s. 4, note, p. 35.

Irrespectively of this Act, a duly registered bill of sale may be void:

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I. As against the landlord of the grantor.
II. As against creditors of the grantor under the Statute of Elizabeth (13 Eliz. c. 5).
III. As against the trustee in bankruptcy of the grantor, under the Bankruptcy Act.

Rights of landlord.

I. Landlords who have the immediate reversion of premises in respect of which rent is due to them may distrain upon the chattels therein to raise money for the payment of rent in arrear, even though such chattels are comprised in a bill of sale which has been registered under this Act. And even goods not on the premises, but which have been fraudulently or clandestinely removed after rent is due, in order to avoid distress, may, if a sufficient amount of other distrainable property is not left on the premises, be distrained within thirty days, unless they have been sold *bonâ fide* and for good consideration to a person ignorant of the wrongful act: (11 Geo. 2, c. 19; Smith's Common Law, p. 1871–93.)

But this last rule applies to the goods of a tenant only, and not to those of a stranger (*Thornton* v. *Adams,* 5 Mau. & Sel. 38); so that a *bonâ fide* holder of a bill of sale may, with the assent of the debtor, take possession of the goods comprised in the bill of sale, although he knows that the debtor is in distressed circumstances, and under an apprehension that the landlord will distrain (*Bach* v. *Meats,* 5 M. & S. 200).

The doctrine of marshalling applies in favour of holders of bills of sale. Thus, where a landlord distrained upon and sold goods of his tenant, some of which were comprised in a bill of sale and some were not, it was held, on the bankruptcy of the tenant, that the holder of the bill of sale was entitled to stand in the place of the landlord and to be paid the amount of his mortgage debt, out of the proceeds of goods taken under the distress but not comprised in the bill of sale: (*Ex parte Stephenson,* De G. 586.)

Things exempt from distress.

Certain things are absolutely privileged from distress; others are so conditionally.

The things which are absolutely privileged from distress are (1) fixtures; (2) things delivered to a person exercising a public trade to be carried, wrought, worked up, or managed in the way of his trade or employ; (3) things in actual use; (4) animals *feræ naturæ*; (5) things *in custodiâ legis* — such as, property already taken damage feasant, or in execution; (6) property of gas and railway companies, in certain cases.

§ 8. Cocks and sheaves of corn are made distrainable by statute (2 Will. & M. c. 5).

The things which are conditionally privileged from distress are (1) beasts of the plough and instruments of husbandry; (2) the instruments of a man's trade or profession, which are privileged provided that there be other sufficient distress upon the premises; and (3) the furniture and goods of lodgers, by statute (34 & 35 Vict. c. 79).

For the authorities and cases see *Simpson* v. *Hartopp* (1 Sm. L. C. 439); Woodfall, pp. 395–410.

Farming stock.

By 56 Geo. 3, c. 50, s. 11, it is enacted that "no assignee under any bill of sale, nor any purchaser of the goods, chattels, stock, or crop of any person or persons engaged in husbandry, on any lands let to farm, shall take, use, or dispose of any hay, straw, &c., or any manure, &c., or other dressings intended for such lands, and being thereon, in any other manner, and for any other purpose, than such . . . person so employed in husbandry ought to have taken, used, or disposed of the same if . . . no such assignment or assignments had been executed, or sale made."

Such farming stock and produce are not "personal chattels" within the meaning of this Act; and registration of bills of sale comprising such stock or produce is of no avail to the holder: (see s. 4; and cf. *Hawkins* v. *Walrond*, 1 C. P. Div. 280.)

Rights of creditors under 13 Eliz. c. 5.

II. By virtue of 13 Eliz. c. 5, a bill of sale, even if registered, of goods and chattels, made for the purpose of delaying, hindering, or defrauding creditors, is rendered void *as against such creditors*, unless made upon valuable consideration, *and bonâ fide*, to a person not having at the time of such gift notice of such fraud: (see *Spirett* v. *Willows*, 3 De G. J. & Sm. 293; *Freeman* v. *Pope*, L. Rep. 5 Ch. 538; *Twyne's case*, 1 Sm. L. C. 1.)

But such a bill of sale is good as against the grantor (*Robinson* v. *M'Donnell*, 2 B. & Ald. 134) and other persons privy and consenting to it (*Steel* v. *Brown*, 1 Taunt. 381; *Olliver* v. *King*, 25 L. J. Ch. 427); and as against strangers, other than creditors or *bonâ fide* purchasers (*Bessey* v. *Windham*, 6 Q. B. 166).

If before the bill of sale is avoided the holder assign the goods to a *bonâ fide* purchaser for value, the assignee acquires a valid title to the goods (*Morewood* v. *South Yorkshire Railway Company*, 3 H. & N. 798); and it has been held that a bill of sale for good consideration is not void either at common law or under the statute merely because it is made with intent to defeat the

expected execution of a judgment creditor (*Hale* v. *Saloon Omnibus Company*, 4 Drew. 492; *Darvill* v. *Terry*, 6 H. & N. 807); or because intended to prevent the discovery of a felony (*Re Mapleback, ex parte Caldecott*, 4 Ch. Div. 150).

As to the circumstances under which the maker of a voluntary bill of sale may himself avoid it, see *Phillips* v. *Mulling* (L. Rep. 7 Ch. 244); *Hall* v. *Hall* (L. Rep. 8 Ch. 430).

See further, as to this statute, *Ellison* v. *Ellison* (1 Wh. & Tud. L. C. 273).

Rights of trustee in bankruptcy.

III. Under the Bankruptcy Act, 1869, a bill of sale is void as against the trustee in the following cases:

1. If it be an assignment of the whole property of the debtor, or of the whole with a merely nominal exception, to secure a past debt (*Ex parte Hawker*, L. Rep. 7 Ch. 214; *Re Wood*, L. Rep. 7 Ch. 302; *Re Gibson, ex parte Bolland*, 8 Ch. Div. 230), unless there is a substantial fresh advance made at the time (*Ex parte Fisher, re Ash*, L. Rep. 7 Ch. 636). In such cases the assignment is an act of bankruptcy.

2. If it be a fraudulent preference (s. 92) in favour of one creditor over the others: (see *Smith* v. *Pilgrim*, 2 Ch. Div. 127; *Tomkins* v. *Saffery*, 3 App. Ca. 213.)

3. If it be a fraudulent gift, delivery, or transfer of the property of the grantor, or any part thereof (s. 6, sub-s. 2) (*Ex parte Pearson, re Mortimer*, L. Rep. 8 Ch. 667; *Ex parte Cooper, re Baum*, W. N. 1878, p. 244; or made in contemplation of bankruptcy (*Ex parte Williams*, 7 Ch. Div. 138).

4. By s. 91 any voluntary settlement by a trader not being a settlement "made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt appointed under this Act, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settlor was at the date of such settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee." This section applies to settlements executed before, as well as after, the Act came into operation: (*Ex parte Dawson*, L. Rep. 19 Eq. 433.) For cases on this section, see *Taylor* v. *Coenen* (1 Ch. Div. 636); *Re Andrew's Trusts* (7 Ch. Div. 635).

5. A bill of sale executed after an act of bankruptcy com-

§§ 9, 10. mitted by the bankrupt within twelve months next preceding the order of adjudication, is void as against the trustee, whose title relates back to the time of such act of bankruptcy (Bankruptcy Act, 1869, s. 11; *Ex parte Learoyd*, 10 Ch. Div. 3); unless it be a protected transaction within the meaning of ss. 94 and 95: see *Cooper* v. *Chitty* (1 Sm. L. C. 488); *Re Wright* (3 Ch. Div. 70); and ss. 8 and 20 of this Act.

For provisions affecting the validity of bills of sale by the sheriff, see Bankruptcy Act, 1869, ss. 6 (5), 87, 95 (3); 19 & 20 Vict. c. 97, s. 1.

Sect. 9. *Avoidance of certain duplicate bills of sale.*—Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

This section is new, and seems intended to meet such cases as *Smale* v. *Burr* (L. Rep. 8 C. P. 64) and *Ramsden* v. *Lupton* (L. Rep. 9 Q. B. 17), where the necessity of immediate registration was successfully avoided by giving new bills of sale of the same chattels at intervals of less than twenty-one days. But in bankruptcy these contrivances were generally held invalid as a fraud on the bankruptcy laws: (see *Ex parte Stevens*, L. Rep. 20 Eq. 786; *Re Jackson, ex parte Hall*, 4 Ch. Div. 682; *Ex parte Furber, re Pellew*, 6 Ch. Div. 181.)

Sect. 10. *Mode of registering bills of sale.*—A bill of sale shall be attested and registered under this Act (*a*) in the following manner:

(1.) The execution (*b*) of every bill of sale shall be attested by a solicitor (*c*) of the Supreme Court, and the attestation (*d*) shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor: **§ 10.**

(*a*) "*Under this Act.*"—Under the Act of 1854 attestation was unnecessary (*Deffell* v. *Miles*, 15 L. T. Rep. N. S. 293); and it is so still, it seems, except for the purposes of this Act.

(*b*) "*Execution.*"—The sealing and delivery of a deed are termed the execution of it (Williams' Real Prop. p. 148, 11th edit.). Signing is in most cases necessary or advisable, under the Statute of Frauds (*Ibid.* 152).

(*c*) "*A solicitor.*"—The attesting solicitor should not be the solicitor of the grantee, nor his clerk or agent, if acting in the matter (*Pryor* v. *Swaine*, 2 Dowl. & L. 37); nor, perhaps, the commissioner before whom any of the required affidavits are sworn (s. 17) (*Duke of Northumberland* v. *Todd*, 7 Ch. Div. 777). But under the old Warrant of Attorney Acts, which are *in pari materiâ* (see sub-sect. 2, *infra*), before an express provision to the contrary was made, it was held that the fact of the same solicitor having acted on behalf of both parties did not make the security void: (*Mason* v. *Kiddle*, 5 M. & W. 514.) Attestation by an uncertificated solicitor is sufficient, but he loses his fees: (*Holgate* v. *Slight*, 21 L. J. Q. B. 74; *Sparling* v. *Brereton*, L. Rep. 2 Eq. 64.)

(*d*) "*The attestation shall state.*"—This is, apparently, not necessary where the grantor is himself a solicitor (*Chipp* v. *Harris*, 5 M. & W. 430); but in other cases the attestation should follow the words of the Act. For form see *post*, p. 78.

With reference to the similar but more stringent form of attestation necessary under the Warrant of Attorney Acts (1 & 2 Vict. c. 110, s. 10; the Debtors Act, 1869, c. 62, s. 24), see *Chipp* v. *Harris* (5 M. & W. 430); *Downs* v. *Garbut* (12 L. J. Q. B. 269); Fisher on Mortgages, 110-115.

(2.) Such bill (*a*), with every schedule or inventory (*b*) thereto annexed or therein referred to, and also (*c*) a true copy (*d*) of such bill and of every such schedule or inventory, and of

§ 10.

every attestation of the execution of such bill of sale, together with (*e*) an affidavit (*f*) of the time (*g*) of such bill of sale being made or given, and of its due execution and attestation (*h*), and a description (*i*) of the residence (*k*) and occupation (*l*) of the person making or giving the same (*m*) (or in case the same is made or given by any person under or in the execution of any process (*n*), then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness (*o*) to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar (*p*) within seven clear days (*q*) after the making or giving of such bill of sale, in like manner as a warrant of attorney (*r*) in any personal action given by a trader is now by law required to be filed :

By the Bills of Sale Act, 1854, the bill of sale and schedule, *or* a true copy thereof, had to be filed within *twenty-one* days; and an affidavit of the "due execution and attestation" of the bill was not required.

Mode of registration.

The requisites of a valid registration of a bill of sale under this Act seem to be as follows :

(i.) The following documents must be presented to the registrar within seven clear days after the making of the bill :

1. The original bill, with every defeasance, condition, or declaration of trust not contained in the body thereof, all written on the same paper or parchment (see subsect. 3).
2. Every schedule or inventory annexed or referred to in the bill.
3. A copy (α) of such bill, including every defeasance, &c. (β) of every such schedule or inventory, and (γ) of every attestation of the execution of such bill.
4. An affidavit of (α) the time of the making of the bill,

(β) of its due execution and attestation, (γ) of the description of the residence and occupation of the grantor, and (δ) of the description of the residence and occupation of each attesting witness.

(ii.) Such copy and affidavit must be filed with the registrar within seven clear days after the making of the bill.

(*a*) "*Such bill.*"—The Bills of Sale Act, 1854, only directed that the original bill *or* the copy should be filed with the registrar. But the Stamp Act (24 & 25 Vict. c. 91), s. 34 (re-enacted by s. 57 of the Stamp Act, 1870), provides that "A copy of a bill of sale is not to be filed in any court unless the original, duly stamped, is produced to the proper officer." But as that Act was for the protection of the revenue only, the non-production of the original to the registrar did not affect the validity of the registration if the copy was once filed.

Under the Act of 1854 it was held that, though the original was not duly stamped at the time of filing, the copy might be given in evidence on payment of the deficiency of duty, and the penalty: (*Bellamy* v. *Saull*, 4 B. & S. 265.)

Mere clerical errors, or even actual misstatements, if made without a fraudulent intent, do not make the registration void: (*Biddulph* v. *Goold*, 11 W. R. 882; *Darvill* v. *Terry*, 6 H. & N. 807.)

(*b*) "*With every schedule or inventory.*"—Under the Act of 1854, where the original schedule had been dis-annexed and lost, it was held sufficient to file a copy of the schedule with the original bill: (*Green* v. *Attenborough*, 3 H. & C. 468.)

A reference to a schedule where none was annexed was held, in *Weeks* v. *Maillardet* (14 East, 568), to make the deed void. See, however, *England* v. *Downs* (2 Beav. 522).

Where there is a variance between the description in an inventory and that in the body of a deed, the rule is that "if something clearly within the terms of the deed has been omitted from the inventory, such omission does not prevent its passing by the deed. On the other hand, the scope of a deed cannot be enlarged by a mere reference to a detailed catalogue of the things which were intended to be conveyed:" (*Ex parte Jardine*, L. Rep. 10 Ch. 322. See also *Howard* v. *Earl of Shrewsbury*, L. Rep. 17 Eq. 378; *Sutton* v. *Bath*, 1 Fos. & Fin. 152; *Cort* v. *Sagar*, 3 H. & N. 370.)

A bill of sale is not inadmissible in evidence by reason only

§ 10. that the schedule annexed is not admissible for want of a stamp: (*Dyer* v. *Greene*, 1 Ex. 71; *Duck* v. *Braddyl*, 13 Price, 455.)

(*c*) "*And also.*"—In the Act of 1854 "*or.*"

(*d*) "*A true copy.*"—Mere clerical errors in the copy, as a mis-statement in one place of the consideration, or the mis-spelling of a name, do not make the registration void: (*Elliott* v. *Freeman*, 7 L. T. Rep. N. S. 715; *Gardnor* v. *Shaw*, 24 L. T. Rep. N. S. 319.)

(*e*) "*Together with.*"—The bill, copy, and affidavit must be presented to the registrar at one and the same time: (*Grindell* v. *Brendon* 6 C. B. N. S. 698.)

(*f*) "*An affidavit.*"—The affidavit need not, it seems, be made by the solicitor or other attesting witness; but it must be made by a person or persons in a position to prove the following things:

1. The time of the bill of sale being made or given.
2. The due execution and attestation of the bill.
3. The residence and occupation of the grantor.
4. The residence and occupation of *every* attesting witness.

For form of affidavit see p. 104.

Mere clerical errors do not avoid the affidavit (*Hollingsworth* v. *White*, 6 L. T. Rep. N. S. 604; *Holmes* v. *London and South-Western Railway*, 13 Q. B. 211; *Lamb* v. *Bruce*, 24 W. Rep. 645); and it is sufficient if an attesting witness describes himself therein as "deponent" (*Sladden* v. *Sergeant*, 1 Fos. & Fin. 322); or if he describe the residence and occupation of the grantor "to the best of his belief" (*Roe* v. *Bradshaw*, L. Rep. 1 Ex. 106).

(*g*) "*Time of such bill of sale being made.*"—The affidavit must state distinctly that the bill of sale was made at such a time; it is not enough to state merely the date of the instrument: (*Dillon* v. *Edwards*, 2 Moo. & P. 550.)

(*h*) "*Of its due execution and attestation.*"—This is new. (See s. 10 (1).

(*i*) "*A description.*"—Particular care should be taken to describe the residence and occupation correctly and sufficiently, a very slight inaccuracy being enough to make the registration void.

In the case of alleged misdescription the onus of proof lies

on the party seeking to impeach the bill of sale: (*Sutton* v. *Bath*, 3 H. & N. 382.) **§ 10.**

The description required is that which was applicable at the time of the making of the bill of sale, not of the filing of the affidavit; if it has changed between those two periods, an affidavit of the former description is sufficient, though framed in the present tense: (*London and Westminster Loan Company* v. *Chace*, 12 C. B. N. S. 730; *Brodrick* v. *Scale*, L. Rep. 6 C. P. 98.)

The description must appear in the affidavit, and it is not enough that it is contained in the bill of sale itself. Thus, where the grantor was described in the bill of sale as "John Bretz, of No. 9, George-street, Minories, in the City of London, hotel keeper," and the affidavit annexed described him as "the said John Bretz, of No. 9, George-street, Minories, in the said city of London, in the said bill of sale mentioned," but did not add "hotel keeper," the affidavit was held to be insufficient: (*Pickard* v. *Bretz*, 5 H. & N. 9; *Hatton* v. *English*, 7 E. & B. 94.) But it is sufficient if the affidavit show the residence and occupation by reference to the bill of sale: (*Banbury* v. *White*, 2 H. & C. 300; *Foulger* v. *Taylor*, 5 H. & N. 202.) Where the residence of the grantor was stated in the affidavit incompletely, but accurately so far as it went, and was completely stated in the bill of sale, it was held that the bill of sale might be referred to in order to explain and supplement the affidavit: (*Jones* v. *Harris*, L. Rep. 7 Q. B. 157.) But a variance between the description in the bill of sale and the description in the affidavit is fatal: (*Murray* v. *Mackenzie*, L. Rep. 10 C. P. 625; *James* v. *Macken*, L. T. 1878, p. 139.)

(*k*) "*Residence.*"—A person's residence is either (1) his place of business or that of his employer (*Ablett* v. *Basham*, 5 E. & B. 1019; *Blackwell* v. *England*, 8 E. & B. 541; *Hewer* v. *Cox*, 30 L. J. Q. B. 73); or, it seems (2), his private abode (*Yardley* v. *Jones*, 4 Dowl. P. C. 45; or (3), if a company, its principal office (*Shears* v. *Jacob*, L. Rep. 1 C. P. 513; *Maughan* v. *Sharpe*, 17 C. B. N. S. 443).

It has been held under the Bankruptcy Act, 1869, that a description of a liquidating debtor who had given up business by his business address only, omitting all mention of his private residence, is insufficient: (*Ex parte Jerningham*, 47 L. J. Bank. 115.)

The description of the residence must be such as to enable the creditors of the grantor to trace out who is the grantor and

§ 10. who are the attesting witnesses, and so ascertain the *bona fides* of the transaction. Reasonable but not minute particularity is therefore necessary: (*Briggs* v. *Boss*, L. Rep. 3 Q. B. 268; *Thorpe* v. *Browne*, L. Rep. 2 H. of L. 220.)

Thus, where the attesting witness described himself as an accountant residing "at Hanley, in the county of Stafford"—a place with 40,000 inhabitants—the description was held sufficient, it being proved that letters had reached him with that address only. But the description of a witness as of the "city of Cork, law clerk," was insufficient (*Re Hams*, 10 Ir. Ch. Rep. 100), though it might have been enough in the case of one of the principal merchants (*Briggs* v. *Boss*, L. Rep. 3 Q. B. 268).

An error in the description which cannot mislead is not fatal, as where the grantors described themselves as residing at Blackfriars "in the county of Middlesex," instead of "in the city of London" (*Hewer* v. *Cox*, 3 L. T. Rep. N. S. 508; see also *Blount* v. *Harris*, 47 L. J. Q. B. 596; *Ex parte Hattie, re Wood*, 39 L. T. Rep. N. S. 373). But a mistake in the number of a house is fatal (*Murray* v. *Mackenzie*, L. Rep. 10 C. P. 625).

(*l*) "*Occupation.*"—Occupation means "the principal business of a man's life, vocation, calling, trade—the business which a man follows to procure a living or obtain wealth:" (*Tuton* v. *Sanoner*, 3 H. & N. 280.)

A "gentleman" is a person of no definite occupation; and therefore a solicitor's clerk (*Dryden* v. *Hope*, 9 W. R. 18; *Brodrick* v. *Scale*, L. Rep. 6 C. P. 98); a clerk in the Audit-office (*Allen* v. *Thompson*, 1 H. & N. 15); a buyer of silk to a firm (*Adams* v. *Graham*, 9 L. T. Rep. N. S. 606); an accountant (*Beales* v. *Tennant*, 29 L. J. Q. B. 188), are not sufficiently described as gentlemen.

But "gentleman" is a sufficient description of a person with no definite occupation, as "a man who had drawn bills of sale, written letters, and collected debts, but only on rare occasions" (*Smith* v. *Cheese*, 1 C. P. Div. 60), or a medical student trying to make a livelihood by authorship and letting lodgings (*Sutton* v. *Bath*, 3 H. & N. 382), or a person out of employment (*Morewood* v. *South Yorkshire Railway Company*, 3 H. & N. 798). Such persons may also be described as "of no occupation" (*Trousdale* v. *Sheppard*, 14 Ir. C. L. 370).

"Widow" is a sufficient description of a lady carrying on the farm of her deceased husband, as his executrix only, and

not with a view to taking to the farm permanently (*Luckin* v. *Hamlin*, 21 L. T. Rep. N. S. 366), but not of a person in trade (*Crosbie* v. *Murphy*, 8 Ir. C. L. R. 301).

"Esquire" is not a sufficient description of a merchant (*Re O'Connor*, 27 L. T. Rep. O. S. 27), nor of a manager of a theatre (*Ex parte Hooman*, L. Rep. 10 Eq. 63).

"Accountant" has been held to be a sufficient description of an accountant's managing clerk, who occasionally did business on his own account (*Briggs* v. *Boss*, L. Rep. 3 Q. B. 268), but not of a clerk in the accountant's department of the Euston Square Station, who was occasionally employed to balance tradesmen's books (*Larchin* v. *North-Western Deposit Bank*, L. Rep. 10 Ex. 64).

"Clerk" is a sufficient description of an attesting witness, without adding the occupation of his master (*Lamb* v. *Bruce*, 45 L. J. Ex. 538); "broker" of a ship broker (*Gugen* v. *Sampson*, 4 F. & F. 974); and "Government clerk" of a clerk in the Admiralty-office (*Grant* v. *Shaw*, L. Rep. 7 Q. B. 700).

"Foreman tailor's cutter" was held to be an insufficient description of a man whose *wife* kept a school and took in lodgers (*Ex parte National Deposit Bank*, 26 W. R. 375); but a son with the same name as his father need not be described as "the younger" (*Foulger* v. *Taylor*, 1 L. T. Rep. N. S. 57).

A peer may be described by his title: (*Re Earl of Limerick*, 7 Ir. Jur. N. S. 65.)

(*m*) "*Of the person making or giving the same.*"—If there be more than one grantor, the residence and occupation of each one must be proved by the affidavit, even though one grantor only is in possession of the goods: (*Hooper* v. *Parmenter*, 10 W. R. 648.)

(*n*) "*In the execution of any process.*"—As to bills of sale by the sheriff, see *Loader* v. *Hiscock* (1 F. & F. 132); *Hernaman* v. *Bowker* (11 Ex. 760).

A bill of sale made under or in the execution of any legal process for the purpose of obtaining payment of not less than £50, is an act of bankruptcy on the part of the person against whom such process issued, if he be a trader: (see the Bankruptcy Act, 1869, s. 6 (5); *Ex parte Pearson, re Mortimer*, L. Rep. 8 Ch. 667; *Stock* v. *Holland*, L. Rep. 9 Ex. 147; *Ex parte Brooke*, L. Rep. 9 Ch. 301.)

(*o*) "*Every attesting witness.*"—If there be more than one

§ 10. attesting witness, the residence and occupation of each must be proved by the affidavit: (*Pickard* v. *Marriage*, 1 Ex. Div. 364.)

If a bill of sale is made by a company, directors, who sign their names merely for the purpose of authenticating the company's seal, are not "attesting witnesses" within the meaning of the Act: (*Deffell* v. *White*, L. Rep. 2 C. P. 144.)

(*p*) "*Filed with the registrar.*"—The registrar cannot refuse to register the bill of sale on the ground of insufficiency (*Needham* v. *Johnson*, 8 B. & S. 190), unless it be insufficiently stamped (33 & 34 Vict. c. 97, s. 57).

If insufficiently stamped at the date of registration, the bill of sale may still be given in evidence on payment of the duty and penalty: (*Bellamy* v. *Saull*, 4 B. & S. 265.)

(*q*) "*Within seven clear days.*"—These are to be reckoned exclusively of the day of execution: (*Williams* v. *Burgess*, 12 A. & E. 635.)

(*r*) "*Warrant of attorney.*"—For the registration of warrants of attorney, see 3 Geo. 4, c. 39; 6 & 7 Vict. c. 36; and the Debtors Act, 1869, c. 62, ss. 24, 29. The addition of these words does not appear to necessitate any extra formality in the case of bills of sale.

(3.) If the bill of sale is made or given subject to any defeasance or condition (*a*), or declaration of trust (*b*) not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill (*c*), and shall be written on the same paper (*d*) or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

(*a*) "*Defeasance or condition.*" — Under the Act of 1854, which contained a similar provision, it was held that a parol agreement to pay by *instalments* a debt which was afterwards secured by a bill of sale, and thereby made payable in a lump

sum, was a defeasance or condition, the non-registration of which made the bill of sale void: (*Ex parte Southam,* L. Rep. 17 Eq. 578.) **§ 10.**

In another case a bill of sale was expressed to be made in consideration of an advance of £130. The sum really advanced was only £100, the £30 being charged by way of bonus and interest; and a written memorandum was signed by the mortgagor, stating that "the charge of £30 was to be paid in full notwithstanding that the money secured by the bill of sale, or the mortgagor's rights under the bill, might be enforced before the expiration of the time for payment mentioned in the bill of sale." It was held that the memorandum was not a condition requiring registration within the meaning of the Act: (*Ex parte Collins, re Lees,* L. Rep. 10 Ch. 367. See also *Thomson* v. *Barrett,* 1 L. T. Rep. N. S. 268; *Ex parte Odell, re Walden,* 39 L. T. Rep. N. S. 333, C. A..)

(*b*) "*Declaration of trust.*"—The trust contemplated by the Act is a trust in which the grantor has an interest. Thus where a bill of sale was made to B., he being a trustee for C., to whom the money advanced really belonged, it was held that there was no trust which required registration: (*Robinson* v. *Collingwood,* 17 C. B. N. S. 777.)

(*c*) "*Part of the bill.*"—A separate stamp on a defeasance seems to be unnecessary: (*Cawthorne* v. *Holben,* 1 N. R. (B. & P.) 279; *Barker* v. *Aston,* 1 F. & F. 192.)

(*d*) "*Same paper.*"—The registration of a warrant of attorney was held, under a similar provision, not to be void by reason only that part of the defeasance was written on a separate piece of paper: (*Burdekin* v. *Potter,* 1 Dowl. N. S. 134.)

(4.) In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels. Priority of bills of sale.

This provision is new.

Under the Act of 1854, as between the holders, bills of sale of the same chattels had priority in the order of the date of their execution, and not of their registration; and priority was not acquired either by registration or by taking possession.

§ 10. But if a bill was rendered void for want of registration as by an execution, it was so for all purposes, and, in such a case, it was postponed to a subsequent bill of sale of the same chattels which was registered, and so void as against the execution creditor: (*Richards* v. *James*, L. Rep. 2 Q. B. 285; *Ex parte Allen*, L. Rep. 11 Eq. 209; *Re Barraud*, 3 Ch. Div. 324; 4 Ch. Div. 23; *Cooper* v. *Braham*, 15 L. T. Rep. N. S. 610.)

Under the Act of 1878, the title of a holder who registers within the seven days, though good as against trustees in bankruptcy and execution creditors of the grantor (ss. 8 and 20), and, it seems, as against the holders of prior bills which have never been registered at all (see *Re Wight*, L. Rep. 16 Eq. 41, a case under the Yorkshire Registry Act), is liable to be defeated by a bill of sale which is later in date but is registered first; and that even though the holder of the subsequent bill had notice of the prior incumbrance (*Edwards* v. *Edwards*, 2 Ch. Div. 291).

Doctrine of notice.

Under the Land and other Registry Acts the statutory rule that priority of title is to depend upon priority of registration has been broken in upon by the equitable doctrine of notice. Thus, in *Le Neve* v. *Le Neve* (2 Wh. & Tud. L. C. 32), lands in Middlesex were settled upon a second marriage with notice of a prior settlement; the second deed was registered, the first was not; it was held, however, that the first deed, though unregistered, was to be preferred in equity. The notice under those Acts may be either actual or constructive; and therefore notice to the solicitor of a second mortgagee is deemed to be notice to his principal, and is sufficient to postpone to a prior unregistered mortgage the security of a subsequent mortgagee who has registered without being aware of the prior incumbrance: (*Agra Bank* v. *Barry*, L. Rep. 7 H. L. 135.)

But it seems that this equitable doctrine of notice is not applicable to modern statutes like the Bills of Sale Acts (Maxwell on Statutes, p. 223; *Edwards* v. *Edwards*, 2 Ch. Div. 291); and that, as regards bills of sale, priority of registration will confer priority of title, in spite of notice of the prior incumbrance.

A bill of sale under this Act by way of further charge should be registered, or it may be postponed to a subsequent bill of sale of the same chattels: (see *Credland* v. *Potter*, L. Rep. 10 Ch. 8, a case under the Yorkshire Registry Act.)

(5.) A transfer or assignment of a registered bill of sale need not be registered. §§ 10, 11.

Nor need the transfer or assignment of an unregistered bill of sale, if executed before the Act of 1854 : (*Re Shaw*, 36 L. T. Rep. N. S. 805.)

By s. 11, "A renewal of registration is not necessary by reason only of a transfer or assignment."

Sect. 11. *Renewal of registration.*—The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date(*a*) of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the Schedule (A.) to this Act annexed (*post*, p. 72).

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.(*b*)

(*a*) The affidavit should state the exact and correct date of the last registration ; an affidavit that a bill of sale was registered "on or about" a certain date, or giving a wrong date, being, it seems, insufficient. But the duty of the registrar is ministerial only, and he cannot refuse to file an affidavit on the ground of insufficiency : (*Needham* v. *Johnson*, 8 B. & S. 190.)

(*b*) A transferee or assignee is under the same obligation as the original grantee to renew the registration every five years (*Karet* v. *Kosher Meat Association*, 2 Q. B. Div. 361) ; but

§ 12. registration is altogether unnecessary in the case of a bill of sale executed before the passing of the Bills of Sale Act, 1854: (*Re Shaw*, 36 L. T. Rep. N. S. 805.)

Sect. 12. *Form of register.*—The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B.) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division,

but the arrangement within each such division need not be strictly alphabetical.

Sect. 13. *The registrar*—36 & 37 *Vict. c.* 66; 38 & 39 *Vict.* c. 77.—The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar.

Sect. 14. *Rectification of register.*—Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

This section is new. The proper course to adopt in such cases under the old Acts was not settled: (see *Re Wright,* 27 L. T. Rep. N. S. 192; *Re O'Brien,* 10 Ir. C. L. Rep. xxxiii.)

Sect. 15. *Entry of satisfaction.*—Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar (*a*) may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

§§ 15, 16.

Entry of satisfaction.

(*a*) "*The registrar.*"—Under the Bills of Sale Act, 1854, s. 6, satisfaction could not be entered without an order of a judge of the Court of Queen's Bench. The practice under that Act is as follows: A consent to an order for the entry of satisfaction must be signed by the mortgagee in the presence of a solicitor, such solicitor making an affidavit verifying the consent. On these documents being filed in Judges' Chambers, an order is granted: and on the registration of such order at the Queen's Bench office, satisfaction is entered on the registry. For forms of consent and affidavit, see *post*, pp. 105 and 106.

Under sect. 8 of the Warrant of Attorney Act (3 Geo. 4, c. 39), which is *in pari materiâ* with this section, it has been held that before the entry of satisfaction strict proof must be given that the debt has been discharged (*Atkinson* v. *Jones*, 2 A. & E. 439); and the consent of all the plaintiffs, if more than one and alive (*Spong* v. *Tucker*, 1 Y. & J. 206), must be first obtained, even if one of them be abroad (*Davies* v. *Jones*, 5 Dowl. 503); but see *De Bastros* v. *Wilmot* (1 Hodges, 15).

A mere cancellation of the bill does not necessarily release the debt, and revest the property in the goods in the grantor, unless in the opinion of the *jury* the cancellation was made with that intent (*Gummer* v. *Adams*, 13 L. J. Ex. 40); the grantor therefore should not dispense with a formal reconveyance or entry of satisfaction. But though satisfaction may not have been entered, the grantee of a bill of sale, which has been in fact satisfied, cannot set up his bare legal title under it as against an execution creditor, even in respect of moneys actually paid by him on behalf of the grantor, but not mentioned in the bill of sale: (*Waterton* v. *Baker*, 17 L. T. Rep. N. S. 494; *Bell* v. *Tidd*, 9 Dowl. 949.) See also *Ex parte Harris, re James* (L. Rep. 19 Eq. 253).

Sect. 16. *Copies may be taken, &c.*—Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit pur-

porting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as *primâ facie* evidence thereof, and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp. **§§ 16, 17.**

As to office copies see 14 & 15 Vict. c. 99, s. 14; *Grindell* v. *Brendon* (6 C. B. N. S. 698).

The production of the original bill, and the certificate of the filing, is no evidence that a proper affidavit has been also filed (*Mason* v. *Wood*, 1 C. P. Div. 63); nor is the production of a certificate that an affidavit and copy bill of sale were registered sufficient evidence that a *true* copy of such bill had been registered (*Emmott* v. *Marchant*, 3 Q. B. Div. 555); though it is *primâ facie* evidence that the affidavit was in the form required by the Act (*Ibid.*, per Lush, J.).

A bill of sale, not duly stamped at the date of registration, may be given in evidence on payment of the deficiency of duty and penalty: (*Bellamy* v. *Saull*, 4 B. & S. 265.)

Sect. 17. *Affidavits.*—Every affidavit required by or for the purposes of this Act may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

Under the old Acts a person who made a false affidavit was guilty of a common law misdemeanour: (*R.* v. *Hodgkiss*, L. Rep. 1 C. C. R. 212.)

The affidavit should not be sworn before a commissioner who at the time of taking the affidavit is acting as solicitor in the matter: (see *Kidd* v. *Davis*, 5 Dowl. 568; *Re Gray*, 21 L. J. Q. B. 380; *Duke of Northumberland* v. *Todd*, 7 Ch. Div. 777.)

§§ 18, 19, 20.

Sect. 18. *Fees.*—There shall be paid and received in common law stamps the following fees, viz.:

On filing a bill of sale	2*s.*
On filing the affidavit of execution of a bill of sale	2*s.*
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing)	5*s.*

Sect. 19. *Collection of fees under* 38 *&* 39 *Vict. c.* 77, *s.* 26.—Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Sect. 20. *Order and disposition*—32 *&* 33 *Vict. c.* 71, *s.* 15 (5).—Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

This section is entirely new.

Under the Act of 1854, it was decided that the mere fact of registration did not take goods comprised in a bill of sale out of the possession, order, and disposition of the grantor on his becoming bankrupt (*Stansfeld* v. *Cubitt*, 2 De G. & J. 222; *Badger* v. *Shaw*, 29 L. J. Q. B. 73); and that if the grantor was a trader (see Bankruptcy Act 1869, sched.), unless the grantee had before the expiration of the twenty-one days taken possession of the goods, they vested in the trustee as from the date of the act of bankruptcy (*Ex parte Harding*, L. Rep. 15 Eq. 223; *Ex parte Attwater*, 5 Ch. Div. 27); but if the grantor was not a trader, a registered bill of sale was valid as against his trustee in bankruptcy (*Re Barrand*, 3 Ch. Div. 324; 4 Ch. Div. 23. See also *Ashton* v. *Blackshaw*, L. Rep. 9 Eq. 510; *Ex parte Homan*, L. Rep. 12 Eq. 598).

Sect. 21. *Rules*—36 & 37 *Vict. c.* 66; 38 & 39 *Vict. c.* 77.—Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875. **§§ 21, 22, 23.**

As to the effect of rules on the construction of the Act, see *Ex parte Weir, re Weir* (41 L. J. Bank. 14); *Ex parte Hunt* (L. Rep. 8 Ch. 234).

Sect. 22. *Time for registration.*—When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

Sect. 23. *Repeal of Acts*—17 & 18 *Vict. c.* 36; 29 & 30 *Vict. c.* 96.—From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

As to construction see sect. 7; and as to renewal of registration see sect. 11.

§ 24. Sect. 24. *Extent of Act.*—This Act shall not extend to Scotland or to Ireland.

SCHEDULES.

Sect. 11.

SCHEDULE A.

I [*A.B.*] of do swear that a bill of sale, bearing date the day of 18 [*insert the date of the bill*], and made between [*insert the names and descriptions of the parties in the original bill of sale*], and which said bill of sale [*or*, and a copy of which said bill of sale, *as the case may be*] was registered on the day of 18 [*insert date of registration*], is still a subsisting security.

Sworn, *&c.*

Sect. 12.

SCHEDULE B.

Satisfaction entered.	No.	By whom given (or against whom process issued).			To whom given.	Nature of instrument.	Date.	Date of registration.	Date of registration of affidavit of renewal.
		Names.	Residence.	Occupation.					

PRECEDENTS. (a)

I.

BILL OF SALE BY WAY OF MORTGAGE OF PRESENT AND FUTURE FURNITURE AND CHATTELS IN AND ABOUT THE MORTGAGOR'S DWELLING-HOUSE.

Precedent I.

THIS INDENTURE, made, &c., between A. B. of, &c. [*mortgagor*], of the one part, and C. D. of, &c. [*mortgagee*], of the other part, WITNESSETH that in consideration of the sum of £ upon the execution of these presents paid to the said A. B. by the said C. D. (the receipt whereof is hereby acknowledged), he the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he the said A. B., his heirs, executors, or administrators, will on the day of next, pay to the said C. D., his executors, administrators, or assigns, the sum of £ with interest for the same in the meantime at the rate of per cent. per annum, AND in case the whole of the same sum shall not then be paid, will thenceforth pay to the said C. D., his executors, administrators, or assigns, interest for the same sum, or for so much thereof as shall for the time being remain unpaid, at the rate aforesaid, by equal half-yearly payments on every day of and day of . AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid he the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, all and singular the

1. Parties.
2. Covenant to pay mortgage money.
3. And interest.
4. Testatum.
5. Assignment.
6. Parcels.

(a) The clauses in these precedents are arranged, to a great extent, in the order recommended in Davidson's Conveyancing. A re-demise to the mortgagor for a term determinable being ineffectual to exclude the operation of the Act, no precedent has been framed in that form: (see *Ex parte Odell*, 39 L. T. Rep. N. S. 333.)

Precedent I.

household furniture, plate, plated articles, linen, glass, china, pictures, books [horses, carriages, saddlery, harness, and stable furniture], tenants' fixtures, goods, chattels, and effects, which now are or at any time during the continuance of this security shall be in, upon, or about the dwelling-house [stables, coachhouses], courtyards, outhouses, and premises of the said A. B., situate in and known as No. in street in the borough of in the county of particulars whereof are contained in the schedule hereto, AND ALL the estate, right, title, interest, claim, and demand of him the said A. B. in, to, and upon the same premises, TO HAVE AND TO HOLD all and singular the chattels and premises hereinbefore expressed to be hereby assigned unto the said C. D., his executors, administrators, and assigns, subject nevertheless to the proviso for redemption hereinafter contained. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said A. B., his heirs, executors, administrators, or assigns, shall on the said day of next pay to the said C. D., his executors, administrators, or assigns, the said sum of £ with interest for the same at the rate of per cent. per annum, then the said C. D., his executors, administrators, or assigns, shall at any time thereafter, at the request and expense of the said A. B., his executors, administrators, or assigns, reassign the said chattels and premises hereinbefore expressed to be hereby assigned unto the said A. B., his executors, administrators, or assigns, and do make and execute all acts, instruments, and things necessary to enable him or them to have a memorandum of satisfaction written upon the registered copy of these presents. AND IT IS HEREBY agreed and declared, that if default shall be made in the payment of the said sum of £ , or the interest for the same, on the said day of next, it shall be lawful for the said C. D., his executors, administrators, and assigns, at any time thereafter during the continuance of this security, and for the purposes thereof, or any purpose connected therewith, to enter into and upon, and if necessary to break into the said dwelling-house and premises, and into and upon any dwelling-house, messuage, or tenement for the time being occupied by the said A. B., his executors, administrators, or assigns, in which any of the said chattels and premises shall be, and to seize and take possession of all and singular the said chattels and premises hereinbefore expressed to be hereby assigned, and either to remove and carry away the same or any of them, or to remain in and upon any such dwelling-house, messuage, and tenement, for the purpose of selling and disposing of the said chattels and premises, or any of them, and to have at all reasonable times full liberty of ingress, egress, and regress, in, to, and from any such dwelling-house, messuage, and tenements, and every part thereof.

7. Habendum.

8. Proviso for redemption.

9. Power to take possession after default.

Precedent I.

But that until possession shall be so taken, the chattels and premises hereinbefore expressed to be hereby assigned, and every part thereof, shall remain in the possession of the said A. B., his executors, administrators, and assigns. And the said A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., his executors, administrators, and assigns, that he, the said A. B., his executors, administrators, or assigns, will not during the continuance of this security remove the said chattels and premises hereinbefore expressed to be hereby assigned, or any of them, from the said dwelling-house and premises without the consent in writing of the said C. D., his executors, administrators, or assigns, except in cases where such removal shall be necessary for the purpose of repair, or by reason of any of the said premises being worn out, and will replace such of them as shall be injured or worn out by other articles of value, at least equal to the present value thereof, but not necessarily of the same kind, so as at all times to keep up the total value of the chattels and other articles for the time being comprised in this security. And that it shall be lawful for the said C. D., his executors, administrators, and assigns, at all reasonable times during the continuance of this security to enter into and upon the said dwelling-house and premises, or any part thereof, or any dwelling-house, messuage, or tenement, for the time being occupied by the said A. B., his executors, administrators, or assigns, in which any of the said chattels and premises shall be, and to view the state of the said chattels and other articles for the time being comprised in this security, and take inventories thereof, and of any want of repair, or other matter whereby the present security is impaired in point of value, and to give to the said A. B., his executors, administrators, or assigns, or leave for him or them at his or their last known place of residence, written notice thereof, and that he or they shall thereupon without delay amend the same. And further, that the said A. B., his executors, administrators, or assigns, will at all times during the continuance of this security, keep such of the chattels and premises for the time being subject to this security, as are or shall be of an insurable nature, insured against loss or damage by fire in the sum of £ , at the least, and will duly and punctually pay all premiums and sums of money necessary for that purpose, and will, in case of fire, forthwith replace or repair the premises destroyed or damaged by fire. And also will from time to time, within days from the time of effecting any such insurance as aforesaid, deposit with the said C. D., his executors, administrators, or assigns, the policy or policies of such insurance, and the receipt for every such payment. And also that, if default shall be made in keeping all the said premises insured in manner aforesaid, it shall be lawful for the said C. D., his executors, administrators, or assigns, to insure

10. Mortgagor to retain possession in the meantime.

11. Covenants by mortgagor; not to remove the property.

12. To keep up the value of the security.

13. That mortgagee may enter.

14. And give notice of want of repair, which shall be thereupon amended.

15. For insurance against fire.

Precedent I.

the same premises, and any part or parts thereof, in any sum not exceeding the sum of £ , and that the said A. B., his heirs, executors, administrators, or assigns, will on demand repay to the said A. B., his executors, administrators, or assigns, every sum of money expended by him or them for such purpose with interest for the same at the rate of per cent. per annum from the time or respective times of the same having been so expended, and that until such repayment the same shall be a charge upon the said chattels and premises hereinbefore expressed to be hereby assigned.

16. Declaration that after-acquired chattels are to form part of the security.

AND IT IS HEREBY agreed and declared that any furniture or other chattels which shall at any time during the continuance of this security be brought or placed upon or used in or about the said dwelling-house and premises known as No. in street, in the borough of either in addition to or in substitution for any furniture or other chattels now being thereon shall be included in this security and be subject to the provisions and covenants herein contained.

17. Power of sale.

AND IT IS HEREBY provided and declared that it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times after the said day of next, without any further consent on the part of any person or persons whomsoever, to sell the premises for the time being comprised in this security, or any of them, or any part thereof respectively, either together or in parcels, and either by public auction or private contract, and upon and subject to such terms and conditions as to title or evidence of title or expenses or otherwise, as the person or persons exercising the power shall think fit, and to buy in or rescind or vary any contract for sale, and to resell, without being responsible for any loss arising therefrom, and for the purposes aforesaid, or any of them, to execute and do all such assurances and things as he or they shall deem proper.

18. Power to be exercised only in certain events.

PROVIDED ALWAYS, and it is hereby agreed and declared, that no person shall exercise the said power of sale unless and until default shall have been made in payment at the time hereinbefore appointed for payment thereof of some principal or other money or interest, the payment whereof is intended to be hereby secured; and the persons or person entitled to require such payments, some or one of them, shall have given a notice in writing to the persons or person liable to make such payment, or entitled to or interested in the equity of redemption of the said premises, some or one of them, requiring payment of the moneys which shall for the time being be owing on the security of these presents, or left a notice in writing to that effect at or upon some part of the said premises, and default shall have been made in payment of the whole or part of such moneys for the space of twenty-eight days from the time of such notice being given or left, or unless or until the whole or part of some half-yearly payment of interest shall be in arrear for the space of twenty-eight days after the same

shall have become payable, or unless and until there shall have been some breach of the covenants on the part of the said A. B., herein contained, other than those for the payment of some principal or interest or other moneys; and every such notice as aforesaid shall be sufficient, though not addressed to any person or persons by name or designation, and, notwithstanding the person or any of the persons affected thereby may be unborn, unascertained, or under disability. PROVIDED ALSO, and it is hereby agreed and declared, that upon any sale purporting to be made under the aforesaid power in that behalf, no purchaser shall be bound to see or inquire whether any of the cases mentioned in the clause lastly hereinbefore contained has happened, or whether any money remains owing on the security of these presents, or as to the necessity or expediency of the stipulations subject to which such sale shall have been made, or otherwise as to the propriety or regularity of such sale; and notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, so far as regards the safety and protection of the purchaser, be deemed to be within the aforesaid power in that behalf, and be valid and effectual accordingly, and the remedy of any person or persons prejudicially affected thereby shall be in damages only; AND IT IS HEREBY also agreed and declared that upon any such sale as aforesaid the receipt of the said C. D., his executors, administrators, or assigns, or his or their agent or auctioneer, for the purchase moneys of the premises sold, or for so much thereof as shall be paid to them or him, shall effectually discharge the purchaser or purchasers therefrom, and from seeing to the application or being answerable for any loss or misapplication thereof. AND IT IS HEREBY further agreed and declared that the person or persons exercising the said power of sale shall, with and out of the proceeds of such sale which shall be paid to him or them, in the first place pay or retain all the costs and expenses incurred in or about such sale or otherwise in respect of the premises, and in the next place apply such moneys in or towards satisfaction of the moneys for the time being owing on the security of these presents, and shall pay the surplus (if any) to the person or persons who immediately before such sale was or were entitled to the equity of redemption of the premises sold. AND IT IS HEREBY also agreed and declared that the several powers hereinbefore contained may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys owing on the security of these presents. AND FURTHER that the person or persons exercising the said powers [and trusts] respectively shall not be answerable for any involuntary losses which may happen in or about the exercise or execution of the aforesaid power and trusts or any of them [and further that the aforesaid powers or anything herein contained shall not in any wise prejudice the right of foreclosure]. AND THE SAID A. B.

Precedent I.

19. Purchaser not to see if sale has been regular.

20. Receipt of mortgagee to be a discharge for the purchase money

21. Trusts of purchase money.

22. Powers to be exercised by any person entitled to give a receipt for mortgage money.

23. Who shall not be liable for involuntary losses.

24. Cove-

Precedent I.

nants for title.

25. For right to assign.

26. For further assurance.

doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that the said A. B. now hath power to assign all the said chattels and premises hereinbefore expressed to be hereby assigned unto the said C. D., his executors, administrators, and assigns, free from incumbrances. AND FURTHER that the said A. B., his executors and administrators, and every person having or claiming any estate, right, title, or interest in or to the same premises or any part thereof will at all times (at the cost until foreclosure or sale of the said A. B., his executors, administrators, or assigns, and afterwards of the person or persons requiring the same) execute and do every such assurance and thing for the further or more perfectly assuring all or any of the same premises unto the said C. D., his executors, administrators, and assigns, and enabling him or them to obtain possession of and quietly enjoy the same, as by him or them shall be reasonably required. IN WITNESS whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

[Signed.]

A. B. L. S.

C. D. L. S.

27. Attestation clause.

SIGNED, SEALED, AND DELIVERED by the above-named A. B. in my presence, and I say that before the execution of this bill of sale the effect thereof has been explained to the said A. B. by me.

[Signed.] W. W.
A solicitor of the Supreme Court.

[The Schedule.]

II.

BILL OF SALE BY WAY OF MORTGAGE TO TWO MORTGAGEES OF FURNITURE, GROWING CROPS, AND FARMING STOCK. (*a*)

Precedent II.

THIS INDENTURE, made the day of 18 between A. B., of &c. farmer, of the one part, and C. D. and E. F. [carrying on business in copartnership under the name or style of the Company, at No. 25, street, in the City of London] of the other part. WHEREAS the said C. D. and E. F. have agreed to lend out of moneys belonging to them upon a joint account to the said A. B. the sum of £ upon having the repayment thereof, with interest for the same at the rate of per cent. per annum, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement and in consideration of the said sum of £ upon the execution of these presents paid to the said A. B. by the said C. D. and E. F., the receipt whereof is hereby acknowledged, the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D. and E. F., their executors, administrators, and assigns, that the said A. B., his heirs, executors, or administrators, will on demand made either to the said A. B., his executors or administrators, personally, or by leaving a notice in writing at his or their last known place of residence, pay to the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, their or his assigns, the sum of £ AND ALSO will in the meantime, by equal half-yearly payments on the day of , and day of in every year, pay to the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, their or his assigns, interest on the said sum of £ , at the rate of per cent. per annum, computed from the date of these presents, but so that if the said principal money shall be paid off on any other day than one of the same half-yearly days, interest thereon shall be paid up to and at the time of the payment of such principal sum.

Parties

Agreement for loan.

Witnesseth.

Consideration.

Covenant for payment of principal on demand.

And interest in meantime.

(*a*) In framing a bill of sale of farming stock the rights of the landlord must be considered: (see *ante*, pp. 32 and 35 n. (*f*).

Precedent II.

Assignment. Parcels.

AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement, and for the consideration aforesaid, the said A. B. doth hereby assign unto the said C. D. and E. F., their executors, administrators, and assigns, ALL AND SINGULAR: First, the household furniture, fixtures, and articles of domestic use or ornament. Secondly, the crops now growing, or which at any time hereafter during the continuance of this security shall grow. Thirdly, the horses, cattle, sheep, pigs, poultry, fodder, corn, hay, roots, straw, grasses, and other live and dead stock and produce. And fourthly, the waggons, carts, carriages, machines and implements of husbandry [but not the engines, machinery, or other agricultural fixtures which are or shall be the property of the said A. B., by virtue of the Agricultural Holdings (England) Act, 1875, or otherwise (*b*)], and [by way of inclusion and not of exception] generally all the goods, chattels, and effects whatsoever which now are or at any time during the continuance of this security shall be in, upon, or about the farmhouse, farm, and lands, and buildings thereon known as the Farm, situate in the parish of , in the county of , now occupied by the said A. B., all of which said fixtures, crops, chattels, and effects are sometimes hereinafter referred to as "the said chattels and premises." And all the estate, right, title, interest, claim, and demand of him the said A. B. in, to, and upon the same premises; TO HAVE AND TO HOLD all and singular the chattels and premises hereinbefore expressed to be hereby assigned unto the said C. D. and E. F., their executors, administrators, and assigns, as joint tenants, subject, nevertheless, to the proviso for redemption hereinafter contained.

Habendum.

Proviso for redemption.

PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said A. B., his heirs, executors, administrators, or assigns, shall on demand made or left as aforesaid, or without such demand having been made or left, pay to the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, their or his assigns, the said sum of £ [*the original loan*] with interest for the same from the date of these presents up to the time of the actual payment thereof at the rate of per cent. per annum, then the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, their or his assigns, shall at any time thereafter, at the request and expense of the said A. B., his executors, administrators, or assigns, reassign the said chattels and premises hereinbefore expressed to be hereby assigned unto the said A. B., his executors, administrators, or assigns,

(*b*) See 38 & 39 Vict. c. 92, s. 53, and 14 & 15 Vict. c. 25. If it is intended to include these fixtures some special provision will be requisite to make them readily available as part of the security. For such a provision see *infra*, p. 87.

Precedent II.

and do, make, and execute all acts, instruments, and things necessary to enable him or them to have a memorandum of satisfaction written upon the registered copy of these presents. And it is hereby agreed and declared that if default (c) shall be made in payment on demand as aforesaid of the whole or any part of the said sum of £ , or the interest for the same respectively, it shall be lawful for the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, their or his assigns, at any time thereafter during the continuance of this security, and for the purposes thereof or any purpose connected therewith, to enter into and upon, and if necessary to break into the said farm, farmhouse, and other buildings, and to seize and take possession of all and singular the said chattels and premises hereinbefore expressed to be hereby assigned, and either to remove, &c. (*Power to take possession on default—Mortgagor to retain possession in the meantime.* See *ante*, p. 74.) And the said A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D. and E. F., their executors, administrators, and assigns, &c. (*Not to remove the property; to keep up the value of the security; that mortgagees may enter; and give notice of want of repair; which shall thereupon be amended; for insurance against fire; declaration that after-acquired chattels are to form part of the security*, pp. 74-76; *joint account clause*, see p. 85—*Power of sale with usual provisions—Covenants for title*, *ante*, p. 76.)

In witness, &c.

Power to break into premises and take possession on default.

Covenants by mortgagor.

Power of sale.

Covenants for title.

(c) The debtor must be allowed a reasonable time for payment after demand is made, otherwise a seizure under this clause is not justifiable: (see *Massey* v. *Sladen*, L. Rep. 4 Ex. 13; *Wharlton* v. *Kirkwood*, 29 L. T. Rep. N.S. 644.)

III.

Precedent III.

MORTGAGE BY COMPANY TO SEVERAL MORTGAGEES OF FREEHOLD AND LEASEHOLD COLLIERIES AND MACHINERY—MORTGAGE OF LEASEHOLDS BY DEMISE—VALUATION MONEYS PAID BY LANDLORD TO BE TREATED AS SALE MONEYS—MORTGAGE MONEY TO BE REPAID BY INSTALMENTS — POWER TO APPOINT RECEIVER — ATTORNMENT CLAUSE.

Parties. THIS INDENTURE, made the day of 1879, between the Collieries Company (Limited) (hereinafter called the company), of the one part, and C. D., of &c., E. F., of &c., and G. H., of &c., of the other part.

Recitals. Title of company to freeholds. WHEREAS, the company are seised of the lands and hereditaments, particulars whereof are contained in the first schedule hereto, and the buildings and erections thereon, for an estate of inheritance in fee simple in possession, free from incumbrances, and are possessed of the

Leaseholds. several leasehold hereditaments, particulars whereof are contained in the first column of the second schedule hereto, for the residues of the several terms of years specified in the third column of the same schedule, and granted by the several indentures of lease, the dates of and parties to which are specified in the second column of the same schedule, and the buildings and erections thereon, at the rents and royalties, and with and subject to the powers, covenants, and conditions in the said several leases respectively reserved and contained, and on the part of the lessees to be paid, performed, and observed, but otherwise free from

Plant, &c. incumbrances. AND WHEREAS the company are absolutely entitled to the plant, machinery, stock, and effects, particulars whereof are contained in the third schedule hereto.

Company empowered to raise money on mortgage. AND WHEREAS, by the articles of association of the company, it is provided that the directors may from time to time, at their discretion, borrow from the directors, members, or other persons any sum or sums of money for the purposes of the company, and may raise or secure the repayment of such moneys in such manner and upon such terms and conditions in all respects as they think fit, and in particular by mortgage or charge of all or any part of the property of the company. AND WHEREAS the

Precedent III.

said A. B., C. D., and E. F. have agreed to lend out of moneys belonging to them on a joint account to the company the sum of £40,000, upon having the repayment thereof secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £40,000 upon the execution of these presents paid to the company by the said A. B., C. D., and E. F. (the receipt whereof is hereby acknowledged), the company do hereby covenant with the said A. B., C. D., and E. F., their heirs, executors, administrators, and assigns, that the company will on demand pay to the said A. B., C. D., and E. F., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns (hereinafter called "the mortgagees or mortgagee"), the sum of £40,000, and also will in the meantime, by equal half-yearly payments, on the day of and the day of in every year (the first of such equal half-yearly payments to be made on the day of next) pay to the mortgagees or mortgagee interest on the said sum of £40,000, or so much thereof as shall for the time being be due, at the rate of per cent. per annum, computed from the date hereof, but so that if the said principal sum or any part thereof shall be paid on any other day than one of the said half-yearly days, interest thereon respectively shall be paid up to and at the time of such payment of principal respectively. AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement and for the consideration aforesaid, the company do hereby grant unto the said A. B., C. D., and E. F., their heirs and assigns, all and singular the lands, minerals, and hereditaments particulars whereof are contained in the first schedule hereto, and also all buildings, erections, furnaces, mills, mill gear, forges, foundries, canals, railways, trams, tramroads, waggon ways, and other effects which are or shall be in the nature of fixtures, and which have been or shall be at any time during the continuance of this security constructed, erected, or placed upon the said lands and hereditaments hereinbefore expressed to be hereby granted, or any of them, or any part thereof respectively, with all rights, privileges, easements, and appurtenances whatsoever to the said lands and hereditaments or any of them or any part thereof appertaining, or with the same now or heretofore enjoyed, or reputed as part or member thereof, or appurtenant thereto. AND ALL the estate, right, title, interest, claim, and demand of the company in, to, and upon the same premises: TO HAVE AND TO HOLD the said lands, buildings, and hereditaments and all other the premises hereinbefore expressed to be hereby granted unto and to the use of the said A. B., C. D., and E. F., their heirs and assigns for ever, subject nevertheless to the proviso for redemption hereinafter contained. AND THIS INDENTURE ALSO WITNESSETH that, in further pursu-

Agreement for loan.

Covenant for payment of loan.

And interest in the meantime half-yearly.

Testatum.

Grant of freeholds.

Habendum.

Testatum.

Precedent III.

ance of the said agreement and for the consideration aforesaid, the company do hereby demise unto the said A. B., C. D., and

Demise of leaseholds.

E. F., their executors, administrators, and assigns, all and singular the lands and hereditaments, mines, seams, strata, or beds of coal, cannel, ironstone, and other minerals, powers, and privileges comprised in or demised by the several indentures of lease the dates of and parties to which respectively and the terms granted by which respectively are specified in the second and third columns respectively of the second schedule hereto AND ALSO all and singular the buildings, erections, furnaces, &c. (*as above*) which have been or shall be at any time during the continuance of this security erected, constructed, or placed upon the said hereditaments hereinbefore expressed to be hereby demised

Habendum.

respectively, or any of them or any part thereof respectively: To HAVE AND TO HOLD the same several parcels of land, buildings, and hereditaments, with their respective rights, easements, and appurtenances as aforesaid, for the several residues now to come of the said several terms for which the same premises respectively were respectively granted by the said several indentures of lease mentioned in the said third column of the second schedule hereto, except the last ten days of each of the same terms respectively, subject nevertheless to the proviso for redemption hereinafter con-

Testatum.

tained. AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement and for the consideration aforesaid,

Assignment of coal and movable machinery and chattels.

the company do hereby assign unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, ALL AND SINGULAR the coal, cannel, ironstone, and other minerals which during the continuance of this security shall be raised from or gotten in or out of the said hereditaments and premises hereinbefore expressed to be hereby assured respectively or any of them or any part thereof AND ALSO the coke and all other the produce of the said coal, cannel, and slack; AND ALSO all and singular the plant, machinery, stock, and effects, and all other the premises whatsoever which are not and shall not be in the nature of fixtures and which now are or at any time during the continuance of this security shall be in, upon, or about the said hereditaments and premises hereinbefore expressed to be hereby granted and demised respectively or any of them or any part thereof respectively; AND ALL the estate, right, title, interest, claim, and demand of the company in, to, and upon the same premises: To

Habendum.

HAVE AND TO HOLD the said premises hereinbefore expressed to be hereby assigned unto the said A. B., C. D., and E. F., their executors, administrators, and assigns absolutely, subject nevertheless to the proviso for redemption hereinafter contained.

Proviso for redemption.

PROVIDED ALWAYS, and it is hereby agreed and declared, that if the company, their successors or assigns, shall on demand, or within twenty-four hours after demand, pay to the mortgagees or mortgagee the said sum of £40,000, with interest for the same

Precedent III.

from the date of these presents up to the time of the actual payment thereof at the rate of per cent. per annum, then the mortgagees or mortgagee shall at any time thereafter, at the request and expense of the company, their successors or assigns, reconvey to the company, their successors or assigns, all the said hereditaments and premises hereinbefore expressed to be hereby assured, according to the nature and tenure thereof respectively, and do, make, and execute all acts, instruments, and things necessary to enable them to have a memorandum of satisfaction written upon the registered copy of these presents. PROVIDED ALWAYS, and the said A. B., C. D., and E. F. do hereby for themselves, their heirs, executors, administrators, and assigns, covenant with the company, their successors and assigns, that if the company, their successors or assigns, shall pay to the mortgagees or mortgagee the said sum of £40,000, with interest for the same at the rate aforesaid, to be computed from the date hereof, by the instalments hereinafter mentioned—that is to say, the said principal sum by equal yearly instalments of £ each, whereof the first is to be paid on the day of next, and a subsequent instalment is to be paid on every subsequent day of , and the interest upon the several half-yearly days hereinbefore appointed in that behalf, or shall make each such payment of principal and interest within twenty-eight days after the days so appointed for payment thereof respectively, and if there shall have been no breach of any of the covenants on the part of the company hereinafter contained—then and in such case the mortgagees or mortgagee shall accept payment of the said principal sum and interest by such instalments as aforesaid, and will not call in or enforce payment of the said principal sum, or any part thereof, otherwise than by such instalments as aforesaid. PROVIDED ALWAYS that the company, their successors or assigns, shall be at liberty at any time or times, upon giving at least one calendar month's notice in writing of their intention so to do, to pay off all or any part of the principal money for the time being owing on the security of these presents, so that not less than £ be so paid at any one time, and that upon any such payment of principal the interest thereon down to the time of such payment be fully paid, and that any such payment by anticipation shall not interfere with the due payment of the instalments subsequently payable pursuant to the provision in that behalf hereinbefore contained. PROVIDED ALWAYS, and it is hereby declared by the said A. B., C. D., and E. F., that the said sum of £40,000 so paid by them as aforesaid is money belonging to them upon a joint account, and that the said A. B., C. D., and E. F., and the survivors and survivor of them, shall remain jointly entitled to the said sum of £40,000 and interest, and that the receipt of the mortgagees or mortgagee shall be an effectual discharge for the same and every

Proviso for payment of mortgage money by instalments.

Power to company to anticipate instalments.

Declaration that money belongs to mortgagees on joint account.

Precedent III.

part thereof respectively. AND THE company do hereby, for themselves, their successors and assigns, covenant with the said A. B., C. D., and E. F., their heirs, executors, administrators, and assigns, that the company will not, nor will their successors or assigns, during the continuance of this security, pull down or remove the said buildings, erections, engines, plant, machinery, stock and premises hereinbefore expressed to be hereby assured, or any of them, without the consent in writing of the mortgagees or mortgagee, except in cases where such pulling down or removal shall be necessary by reason of the said buildings, machinery, and premises being worn out or injured. AND FURTHER, that the company and their assigns will at all times during the continuance of this security maintain the buildings, erections, engines, plant, machinery, and stock hereinbefore expressed to be hereby assured respectively, in as good and efficient condition as the same were on the day of the date hereof, and for that purpose will from time to time make all necessary reparations, and if and when necessary, replace all such of the said buildings, erections, engines, plant, machinery, and stock as shall or may from decay, destruction, or other cause become useless or unadapted for the objects or purposes for which the same were intended, with new substantial and proper buildings, erections, engines, plant, machinery, and stock, and so from time to time as often as occasion shall require, and that it shall be lawful for the mortgagees and mortgagee, and their and his respective agents and surveyors, at all reasonable times during the continuance of this security to enter into and upon and view all or any of the said hereditaments and premises hereinbefore expressed to be hereby assured respectively, and to give notice of any defect in the repair or condition thereof to the company, their successors or assigns, and that the company their successors or assigns shall thereupon, without delay, amend the same. AND FURTHER will at all times during the continuance of this security keep all the buildings, engines, boilers, and machinery, and such of the plant and stock for the time being subject to this security as is or shall be of an insurable nature, insured against loss or damage by fire in the sum of £ at the least [in the names or name of the mortgagees or mortgagee] (*a*) in the insurance office, or in some other insurance office to be approved of by them or him, such sum of £ to be apportioned between the said buildings, engines, boilers, and machinery, and the said plant and stock as near as may be rateably, but so that the buildings shall not be insured for less than £ , and will duly and punctually pay all premiums and sums of money necessary for that purpose, and will in case of fire forthwith rebuild,

Covenants by company.

Not to pull down or remove property.

To keep it in good condition

Mortgagees may enter and view.

To insure.

(*a*) Omit this is if the superior lease requires the premises to be insured in the name of the lessor.

Precedent III.

replace, re-instate, or repair the premises destroyed or damaged by fire. AND also will from time to time within days from effecting any such insurance as aforesaid deposit with the mortgagees or mortgagee the policy or policies of such insurance and the receipt for every such payment. And also that, if default shall be made in keeping all the said premises insured in manner aforesaid (of which default the non-delivery of the policy or receipt for the premium shall be conclusive evidence), it shall be lawful for the mortgagees or mortgagee to insure the same premises and any part or parts thereof in any sum not exceeding the sum aforesaid, and that the company, their successors or assigns, will on demand repay to the mortgagees or mortgagee every sum of money expended by them or him for such purpose, with interest for the same at the rate of per cent. per annum, from the time or respective times of the same having been so expended, and that until such repayment the same shall be a charge upon the hereditaments and premises hereinbefore expressed to be hereby assured. AND IT IS HEREBY agreed and declared that any buildings, erections, engines, plant, machinery, or stock which shall at any time during the continuance of this security be constructed, erected, or placed upon or used in or about the said land and hereditaments hereinbefore expressed to be hereby assured respectively, or any part thereof, either in addition to or in substitution for any buildings, erections, engines, plant, machinery, or stock now standing thereon, shall be included in this security and be subject to the provisions and covenants herein contained. AND IF at any time or times during the continuance of this security the option of taking any plant, stock, or other articles at a valuation or otherwise shall be exercised in pursuance of the provision in that behalf contained in any of the said several indentures of lease, then and in such case all moneys to be paid under or in respect of any such valuation or valuations or otherwise as aforesaid shall be paid to the mortgagees or mortgagee, and be applied by them or him in the same manner as if the same had formed part of moneys arising from any sale herein authorised, and the receipt of the mortgagees or mortgagee shall be a sufficient discharge to the person or persons paying the same. AND IT IS HEREBY provided and declared that it shall be lawful for the mortgagees or mortgagee, at any time or times after the said day of next, without any further consent on the part of any person or persons whomsoever, to sell the premises for the time being comprised in this security, or any of them, or any part or parts thereof respectively, either together or in parcels [and as to all such of the said fixed and movable machinery, plant, and stock as shall belong to the tenants, either together with or separately from the land or building to or upon which the same shall be affixed or stand], and either by public

And to deposit policies and receipts with mortgagees.

On default of mortgagors mortgagees may insure.

Declaration that all buildings and machinery set up during the security are to form part of it.

Valuation money paid by landlord for plant, &c., to be treated as sale money

Power of sale.

Precedent III.

auction or private contract, and upon and subject to such terms and conditions as to title or evidence, or commencement of title or expenses, or the removal of any property which may be sold separately from the land and buildings or otherwise, as the person or persons exercising the power shall think fit. AND to buy in or rescind or vary any contract for sale and to resell without being responsible for any loss arising therefrom. AND for the purposes aforesaid or any of them, to execute and do all such assurances and things as they or he shall deem proper. AND IT IS HEREBY agreed and declared that upon any sale of freehold hereditaments under the power of sale hereinbefore contained by any person or persons who may not be seised of the legal estate of the premises sold, the person or persons in whom such legal estate shall be vested shall make such assurances of the same for the purpose of carrying the sale into effect as the person or persons making such sale shall direct. And that after any sale of leasehold hereditaments, under the power of sale hereinbefore contained, the company their successors and assigns shall stand possessed of the reversions of the said several terms of years respectively upon trust for the purchaser or purchasers of the premises sold, and shall assign and dispose of the same as he or they shall direct. PROVIDED nevertheless that any such purchaser or purchasers may at any time not later than the completion of his or their purchase or purchases, by any writing or writings under his or their hand or hands, disclaim such reversion. (*Power to be exercised only in certain events—Purchaser not to see that sale has been regular—Receipt of mortgagees or mortgagee to be a discharge for the purchase money—Trusts of purchase moneys—Powers may be exercised by any person entitled to give a receipt for mortgage moneys—Who shall not be liable for involuntary losses—Right to foreclosure not to be prejudiced. Ante, p.* 76.) AND IT IS HEREBY also agreed and declared that at any time after the power of sale hereby conferred shall have become exercisable as aforesaid, it shall be lawful for the mortgagees or mortgagee to appoint in writing, as receiver of the rents and profits of the property hereinbefore expressed to be hereby granted and demised respectively, either the said C. D. (and that notwithstanding his being a mortgagee for the time being, in which case his position as mortgagee shall not be prejudiced or affected by his being receiver also), or some other fit and proper person, and from time to time to remove any such receiver and appoint new receivers. AND THAT the receiver for the time being under these presents shall be deemed to be the agent of the company, who shall be solely responsible for his acts and defaults. AND THAT such receiver shall have power to demand and sue for, recover, and give effectual receipts for all the said rents, issues, and profits by action, distress, or otherwise, in the name or names of the company, their successors or

Person seised of legal estate to concur in conveyances.

After sale of leaseholds reversion to be held in trust for purchaser.

Power to appoint a receiver.

Precedent III.

assigns, or of the mortgagees or mortgagee, and, if so directed in writing by the mortgagees or mortgagee, to enter upon and take possession of the said hereditaments and the buildings, engines, boilers, machinery, plant, and stock thereon, and manage the same and the business thereof with all such powers and discretions as he might exercise if he were beneficial owner thereof. AND it is hereby further agreed and declared that the said receiver for the time being shall be entitled to retain out of any money received by him in lieu of all costs, charges, and expenses whatsoever, a commission of 5 per cent. on the gross amount of all money so received by him, and that such receiver shall, if so directed in writing by the mortgagees or mortgagee, insure and keep insured from loss or damage by fire out of the money received by him the whole of the buildings and other property comprised in this security, which is or shall be in its nature insurable, and shall pay and apply all the money received by him in the first place in discharge of all taxes, rates, and assessments whatsoever, and of the rents or royalties respectively reserved by the leases under which any leasehold hereditaments comprised in this security are held, and in payment of his commission as aforesaid, and of the premium or premiums on the insurances (if any), and in the next place in payment of the interest accruing due in respect of the said principal moneys, or so much thereof as shall for the time being remain unpaid, and subject as aforesaid shall pay all the residue of such moneys to the company, their successors or assigns, unless the mortgagees or mortgagee shall in writing require, which they are hereby empowered to do, such residue to be paid to them or him, in reduction of the said sum of £40,000, or so much thereof as shall for the time being remain unpaid. AND THIS INDENTURE ALSO WITNESSETH that for the purpose of better securing the punctual payment of the said principal sum of £40,000 and the interest thereon, and for the consideration aforesaid, the company do hereby attorn (*a*) and become tenants from year to year to the said A. B., C. D., and E. F., their heirs and assigns, in respect of the said hereditaments and premises hereinbefore expressed to be hereby granted, at the yearly rent of £10,000, to be paid on the . day of in every year, the first of such payments to be made on the day of . PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the said A. B., C. D., and E. F., their heirs and assigns, at any time, without giving previous notice of their intention so to do, to enter into and upon and take possession of the hereditaments and premises whereof the company have hereby attorned tenants, and to determine the tenancy hereby created; AND THE company do hereby for themselves, their successors and

Attornment by company.

Covenants by mortgagors for title.

(*a*) As to this clause see *ante*, p. 40.

Precedent III.

assigns, covenant with the said A. B., C. D., and E. F., their heirs, executors, administrators, and assigns, that the said several indentures of lease mentioned in the second schedule hereto are valid and subsisting leases, and are not void or voidable. AND THAT the several rents and all the covenants by the lessees and conditions in and by the said several indentures of lease reserved and contained have been paid, observed, and performed up to the date of these presents; and that the company now have power to grant all the said freehold hereditaments hereinbefore expressed to be hereby granted to the use of the said A. B., C. D., and E. F., their heirs and assigns, AND to demise all the said leasehold hereditaments hereinbefore expressed to be hereby demised unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, for the several terms for which the same respectively are hereinbefore expressed to be hereby demised; AND also to assign the said machinery, chattels, and premises hereinbefore expressed to be hereby assigned unto the said A. B., C. D., and E. F., their executors, administrators, and assigns; AND ALSO that if default shall be made in payment of the said sum of £40,000 or the interest for the same, or any part thereof respectively as hereinbefore provided, it shall be lawful for the said A. B., C. D., and E. F., their heirs, executors, administrators, and assigns respectively, to enter into and upon all or any of the said hereditaments and premises, and thenceforth to hold the same and to receive the rents and profits thereof without any interruption whatsoever, AND THAT free and discharged from or otherwise by the company or their successors sufficiently indemnified against all estates, incumbrances, claims, and demands whatsoever, other than in respect of the rents, covenants, and conditions of the said several indentures of lease respectively. AND FURTHER that the company and every person having or claiming any estate, right, or title in or to the said hereditaments and premises, or any of them, will at all times (at the expense until foreclosure or sale of the company their successors or assigns, and afterwards of the person or persons requiring the same) execute and do every such lawful assurance and thing for the further or more perfectly assuring all or any of the said freehold hereditaments and premises to the use of the said A. B., C. D., and E. F., their heirs and assigns, and for assuring all or any of the said leasehold hereditaments and premises unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, for the then residues of the said several terms for which the same are hereinbefore expressed to be hereby demised, and for assuring all or any of the plant, machinery, stock, and effects hereinbefore expressed to be hereby assigned unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, as by them shall be reasonably required. AND ALSO that the company, their successors or assigns, will at all times hereafter during the con-

That leases are valid.

That rent and covenants have been paid and performed.

For right to convey the freeholds.

And to demise the leaseholds.

And to assign the chattels.

For quiet enjoyment by mortgagees after default.

Free from incumbrances

For further assurance.

For payment of rent and performance of covenants.

Precedent III.

tinuance of this security pay all the rents by the said several indentures of lease mentioned in the second schedule hereto reserved, and perform and observe all the covenants by the lessees and conditions in the same indentures contained, AND keep the said A. B., C. D., and E. F., their heirs, executors, administrators, and assigns, indemnified against all actions, proceedings, costs, charges, damages, claims, and demands whatsoever, which may be incurred or sustained by reason of the non-payment of the said rents, or the breach, non-observance, or non-performance of the said covenants and conditions or any of them, AND will repay on demand all such moneys as the mortgagees or mortgagee shall pay on account of the rents and covenants of the said several leases, or any covenants herein contained relating thereto, with interest for the same moneys at the rate of 5 per cent. per annum, and that all such moneys and interest shall be a charge on the said hereditaments and premises hereinbefore expressed to be hereby assured, which shall not be redeemable until the same shall be paid. (*a*)

IN WITNESS whereof the Collieries Company (Limited) have hereunto caused their common seal to be affixed, and the other parties hereto have respectively set their hands and seals the day and year first above written.

The common seal of the Collieries Company (Limited) was hereunto affixed in my presence, and I say, &c. (See p. 78.)

[Signed] W. W.
A solicitor of the Supreme Court.

(*a*) It seems probable that a further *ad valorem* duty is not required with reference to sums charged by virtue of this provision; but the prudent course would be to stamp the mortgage so as to cover not only the principal sum secured but also what may be considered as a reasonable estimate of the payments intended to be provided against: (see Davidson's Conv. Prec., vol. ii., pt. ii., p. 1028, 3rd edit.)

Precedent III.

THE FIRST SCHEDULE.

All those several closes, inclosures, and pieces of land, situate, &c. And also all the mines and minerals under the said several closes, inclosures, and pieces of land, &c.

THE SECOND SCHEDULE.

Description.	Date and Parties to Indentures of Lease.	Term.	Remarks.
All that, &c. (Parcels from lease).	Indenture dated the day of and made between M. N., of the first part, O. P. of the second part, and the above-named company of the third part.	Forty years, from the 8th of July, 1873.	
All that, &c,	Indenture dated, &c., and made between, &c.	Forty years from the 2nd of December, 1873.	

THE THIRD SCHEDULE.

[*Plant, Machinery, and Stock.*]

IV.

MORTGAGE BY ASSIGNMENT (*a*) TO SECURE PRESENT AND FUTURE ADVANCES, OF LEASEHOLD MILL AND MACHINERY.

Precedent IV.

THIS INDENTURE made, &c., between A. B., C. D., and E. F., copartners, carrying on the business of , at , in the county of York, under the style or firm of and Co., of the one part, and G. H., of, &c., of the other part. WHEREAS, by an indenture, dated, &c., and made between, &c., all, &c. [*parcels from the original lease*], with their appurtenances, were in consideration of the yearly rent of £ , and of the covenants and conditions therein contained, and on the part of the lessees, their executors, administrators, and assigns, to be observed and performed, demised to the said A. B., C. D., and E. F., their executors, administrators, and assigns, for the term of 99 years from the day of, &c. AND WHEREAS the said G. H. has agreed to lend to the said A. B., C. D., and E. F., the sum of £ upon having the repayment thereof, with interest at the rate of per cent. per annum, and also of every other sum or sums (not exceeding in the whole the sum of £ (*b*), which may hereafter be advanced or paid by him or them, to or on account of the said A. B., C. D., and E. F., or any of them, their or any of their executors, administrators, or assigns, with interest at the rate of per cent. per annum, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £ upon the execution of these presents to the said A. B., C. D., and E. F., paid by the said G. H., the receipt whereof is hereby acknowledged, they the said A. B., C. D., and E. F. do, for themselves, their heirs, executors, and administrators, and as separate covenants, each of them doth for himself, his heirs, executors, and administrators, hereby covenant with

Parties.

Recitals.

Testatum

Covenant for payment of mortgage money and further advances

(*a*) A mortgage of leaseholds by assignment makes the mortgagee liable to the payment of the rent reserved, and the performance of the covenants of the lease. If the rent be large, or the covenant of formidable liability, the mortgage must be made by underlease: (Davidson, vol. II., pt. ii., p. 668.) As regards fixtures, see *ante*, p. 43.

(*b*) As to the stamp, see Stamp Act, 1870, c. 97, s. 107.

Precedent IV.

the said G. H., his executors, administrators, and assigns, that they the said A. B., C. D., and E. F., or some or one of them, their or some or one of their heirs, executors, or administrators, will, on the day of next, pay to the said G. H., his executors, administrators, or assigns, the sum of £ , with interest for the same in the meantime at the rate of per cent. per annum; and will on such day of or day of [*days for payment of interest*] as shall happen next after the time of the same respectively having been advanced or become owing, pay to the said G. H., his executors, administrators, or assigns, every other sum of money which may hereafter be advanced by him or them to, or become owing to him or them by the said A. B., C. D., and E. F., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, their or his assigns, with interest for the same at the rate of per cent. per annum, computed from the time of the same respectively having been advanced or become owing.

Testatum. AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said agreement and for the consideration aforesaid, they

Assignment. the said A. B., C. D., and E. F., do and each of them doth

Parcels comprising lands, mill, &c. hereby assign unto the said G. H., his executors, administrators, and assigns, all and singular the pieces or parcels of land, mill, buildings, and premises comprised in and demised by the said

And engines and machinery. indenture of the day of , and also all and singular the steam engines, boilers, mill gearing, millwright work, fixed and movable machinery, implements, chattels, and effects, which now are or at any time during the continuance of this security shall be affixed to or placed upon or used in or about the said mill, buildings, and premises. AND ALL THE ESTATE, right, title, interest, claim, and demand of them the said A. B., C. D., and E. F., and each of them, in, to, and upon the same premises, To

Habendum as to the land and landlord's fixtures. HAVE AND TO HOLD the said pieces or parcels of land, mill, and buildings, and all such of the machinery and effects hereinbefore expressed to be hereby assigned as are or shall be in the nature of landlord's fixtures, and do not or shall not belong to the tenants, unto the said G. H., his executors, administrators, and assigns, from henceforth for the residue now to come of the said term of ninety-nine years, subject nevertheless to the rent and covenants by the lessees and conditions by and in the said indenture of lease reserved and contained, and subject also to the

Habendum as to the chattels and tenant's fixtures. proviso for redemption hereinafter contained. AND TO HAVE AND TO HOLD all such of the said machinery and effects, and all other the premises hereinbefore expressed to be hereby assigned as do or shall belong to the tenants, or are or shall be in the nature of personal chattels, unto the said G. H., his executors, administrators, and assigns absolutely, subject nevertheless to the provisoes, conditions, and covenants in such indenture con-

tained concerning the same, or any of them, or any part or parts thereof, and subject also to the proviso for redemption hereinafter contained. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said A. B., C. D., and E. F., or any of them, their or any of their heirs, executors, administrators, or assigns, shall pay the several sums hereinbefore covenanted to be paid, with interest for the same respectively at the rate aforesaid, on the several days on which the same respectively are hereinbefore covenanted to be paid, then the said G. H., his executors, administrators, or assigns, shall at any time thereafter, at the request and expense of the said A. B., C. D., and E. F., or any of them, their or any of their executors, administrators, and assigns, re-assign all such of the said hereditaments and premises hereinbefore expressed to be hereby assigned as are comprised in, or shall be subject to, the said term of 99 years, or are or shall be of the nature of landlord's fixtures, unto the said A. B., C. D., and E. F., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, or as they or he shall direct, for the then residue of the same term, and all such of the said hereditaments and premises hereinbefore expressed to be hereby assigned, as are not comprised in, or shall not be subject to the said term of 99 years, or are or shall be in the nature of personal chattels, unto the said A. B., C. D., and E. F., or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, their or his assigns, and shall do, make, and execute all acts, instruments, and things necessary to enable them or him to have a memorandum of satisfaction written upon the registered copy of these presents. AND THE SAID A. B., C. D., and E. F. do for themselves, their heirs, executors, and administrators, and as separate covenants each of them doth for himself, his heirs, executors, and administrators, hereby covenant with the said G. H., his executors, administrators, and assigns, that if the said sum of £ , or any sum which may hereafter be advanced or become owing as aforesaid, or any part thereof respectively, shall remain unpaid after the days on which the same are respectively hereinbefore covenanted to be paid, then and in such case they, the said A. B., C. D., and E. F., or some or one of them, their or some or one of their heirs, executors, or administrators, will so long as the same sums, or any of them, or any part thereof respectively, shall remain unpaid, pay to the said G. H., his executors, administrators, or assigns, interest for such sums, or for so much thereof as shall for the time being remain unpaid, at the rate of per cent. per annum by half-yearly payments on the day of and the day of . AND FURTHER, that they, the said A. B., C. D., and E. F. will not, nor will any of them, nor will their or any of their executors, administrators, or assigns,

Precedent IV.

Proviso for redemption.

Covenant to pay interest.

Not to pull down or remove buildings or machinery.

Precedent IV.

pull down or remove the said mill, buildings, machinery, plant, stock, and premises hereinbefore expressed to be hereby assigned, without the written consent of the said G. H., his executors, administrators, or assigns, except, &c. (*as at page* 86). *Covenants to keep buildings in good condition; to insure with subsidiary provisions—Declaration that future buildings, machinery &c., are to be subject to the security, p.* 87. AND IT IS HEREBY provided and declared that it shall be lawful for the said G. H., his executors, administrators, or assigns, at any times after the said day of , without any further consent on the part of any person or persons whomsoever, to sell the said hereditaments and premises hereinbefore expressed to be hereby assigned, &c. (*Power of sale, p.* 87; *Power to be exercised only in certain events; Purchaser not to be bound to see such events have happened; Receipt of mortgagee to be discharge for purchase money; Trusts of purchase money; Power of sale may be exercised by any person entitled to give a receipt for the purchase money, who shall not be liable for involuntary losses, p.* 76.) PROVIDED ALWAYS, and it is hereby agreed and declared, that these presents are intended to be a security for the balance for the time being owing to the said G. H., his executors or administrators, by the copartnership or firm of which the said A. B., C. D., and E. F. are the present members, whether the same copartnership or firm shall consist of the said present members, or any of them, or of them, or any of them, together with any other persons or person, or of any other persons or person only. AND THE SAID A. B., C. D., and E. F. do for themselves, their heirs, executors, and administrators, and as separate covenants each of them doth for himself, his heirs, executors, and administrators, hereby covenant with the said G. H., his executors, administrators, and assigns, that the hereinbefore recited indenture of lease is a valid and subsisting lease, and is not void or voidable. AND THAT the rent and all the covenants by the lessees and conditions in and by the said indenture of lease reserved and contained have been paid, observed, and performed up to the date of these presents. AND THAT the said A. B., C. D., and E. F. now have power to assign all and singular the said premises hereinbefore expressed to be hereby assigned unto the said G. H., his executors, administrators, and assigns. AND ALSO that if default shall be made, &c. [*Covenants for quiet enjoyment after default; free from incumbrances*, p. 90.] AND FURTHER that the said A. B., C. D., and E. F., their heirs, executors, and administrators, and every other person having or claiming any estate, right, or title in or to the said hereditaments and premises or any of them, will at all times (at the expense until foreclosure or sale of the said A. B., C. D., and E. F., or some or one of them, their or some or one of their heirs, executors, or administrators, and afterwards of the person or persons requiring the same) execute and do every such lawful assurance and thing for the

Power of sale.

Declaration as to the nature of the security.

Covenants for title.

That lease is good.

That rent and covenants have been paid and performed.

For right to assign.

For quiet enjoyment after default.

Free from incumbrances.

For further assurance.

Precedent IV.

further or more perfectly assuring all or any of the said hereditaments and premises unto the said G. H., his executors, administrators, and assigns respectively, as by him or them shall be reasonably required. AND ALSO that the said A. B., C. D., and E. F., or some or one of them, or their or some or one of their heirs, executors, or administrators, will at all times hereafter during the continuance of this security pay the said yearly rent by the said indenture of lease reserved, and perform all the covenants by the lessees and conditions in the same indenture contained, AND keep the said G. H., his heirs, executors, administrators, indemnified, &c. [*Covenant to indemnify against actions, &c., and to repay moneys advanced by mortgagee in respect of leases.* See p. 91.]

For payment of rent and performance of covenants.

And indemnity of mortgagee in respect thereof.

IN WITNESS, &c.

V.

Precedent V.

ABSOLUTE BILL OF SALE OF GOODWILL, STOCK-IN-TRADE, AND BOOK DEBTS OF INNKEEPER.

Parties. THIS INDENTURE, made the day of 1880, between A. B. (*vendor*), of &c., innkeeper, of the one part, and C. D. (*vendee*), of &c., of the other part, WITNESSETH that, in consideration.

Testatum.

Consideration. Receipt. Assignment. Parcels. tion of the sum of £ , upon the execution of these presents to the said A. B. paid by the said C. D. (the receipt whereof is hereby acknowledged), he the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL THAT the goodwill and interest of him the said A. B. in the business of an innkeeper, as the same is carried on at or in a certain messuage or tenement situate in street, in the borough of , and known as the "Pickwick Arms," and in any subsidiary trade or trades, business or businesses, carried on by the said A. B. at or in the said messuage or tenement in connection with his said business of an innkeeper; AND the wine and spirit licences belonging to the same messuage, and the full benefit and advantage thereof; AND ALSO all and singular the stock-in-trade, fixtures, furniture, plate, plated articles, linen, glass, china, pictures, books, horses, carriages, saddlery, harness, and other chattels and effects in, upon, or about the said messuage or tenement known as the "Pickwick Arms," and its stables, coach-houses, and outbuildings, and which are particularly mentioned in the first schedule hereto; AND also all and singular the book and other debts, sum and sums of money and securities for money mentioned in the second schedule hereto, AND ALL the estate, right, title, interest, claim, and demand of him the said A. B., in, to, and upon the same premises; TO HAVE AND TO HOLD all and singular the chattels and premises hereinbefore expressed to be hereby assigned unto the said C. D., his executors, administrators, and assigns absolutely. AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that notwithstanding anything by the said A. B. done, omitted, or knowingly suffered, he the said A. B. now has power to assign all the said chattels and premises hereinbefore expressed to be hereby assigned unto the said C. D., his executors, administrators, and assigns, free from incumbrances. AND FURTHER, that &c. [*Cove-*

Habendum.

Covenants by vendor for title.

For right to assign.

For further assurance.

nant for further assurance ; such assurance to be made at the cost "of the person or persons requiring the same," p. 78.] Precedent V.

IN WITNESS, &c.

FIRST SCHEDULE.

[*Stock in trade, &c.*]

SECOND SCHEDULE.

[*Book debts, &c.*]

VI.

Precedent VI.

BILL OF SALE BY THE SHERIFF OF GOODS TAKEN IN EXECUTION.

Parties. THIS INDENTURE, made the day of , 1878, between G. A., of, &c., , Esquire, High Sheriff of the county of , of the one part, and C. D., of, &c., , and E. F., of, &c., , of the other part.

Recital of writ of fi. fa. WHEREAS, by virtue of a writ of *fi. fa.* issued out of the Division of Her Majesty's High Court of Justice to the said sheriff directed and delivered for levying on the goods and chattels of A. B. the sum of £ , together with the sum of £ for interest thereon, at the rate of per cent. per annum from the day of (*a*), and also the sum of £ for costs, together with interest thereon at the rate of 4 per cent. per annum from the day of (*b*) (which moneys the said C. D. and E. F. have recovered in the said court against the said A. B.) the said G. A. hath seized and taken

Agreement to assign. divers goods and chattels of the said A. B. in execution. AND WHEREAS the said G. A. hath agreed to assign all and singular the said goods and chattels so taken in execution as aforesaid unto the said C. D. and E. F. for the sum of £ , at

Testatum. which the same have been valued and appraised. NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £ , upon the execution of these presents to the said G. A. paid by the said C. D. and E. F. (the receipt whereof is hereby acknowledged), he, the said G. A., by

Assignment. virtue of the said writ and of his office, doth hereby assign unto the said C. D. and E. F., their executors, administrators, and assigns, all and singular the stock, utensils in

Parcels. trade, household furniture, goods, chattels, and other effects and things being in and upon the messuage, yard, stable, and other buildings and premises now in the occupation of the said A. B, situate and being at , in the county aforesaid, and which

(*a*) Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

(*b*) The date of the certificate of taxation.

The recital must be moulded so as to follow the substance of the writ. See Judicature Act, 1875, App. F.

Precedent VI.

are particularly mentioned and set forth in the schedule hereunder written; To HAVE AND TO HOLD all and singular the goods, chattels, and premises hereinbefore expressed to be hereby assigned unto the said C. D. and E. F., their executors, administrators, and assigns, as joint tenants [*or* tenants in common], and as their own goods and chattels absolutely in [*or* towards] satisfaction of the said sums of £ and £ . Habendum.

In witness (*a*), &c.

Attestation (*b*). Attestation.

SCHEDULE.

(*a*) If the bill of sale be signed, or sealed by the under-sheriff, or by a deputy of the sheriff or of the under-sheriff, it is valid (*Cookson* v. *Fryer*, 1 F. & F. 328; *Shepherd* v. *Wheble*, 8 C. & P. 534; *Bunbury* v. *Matthews*, 1 C. & K. 380); and if by an officer of the sheriff, the Court will presume he was authorized (*Robinson* v. *Collingwood*, 17 C. B. N. S. 777).

(*b*) If the sheriff should execute the deed by power of attorney the signature will be "G. A., Sheriff, by X. Y., his attorney:" (*Wilks* v. *Back*, 2 East, 142.) And the attestation clause will run, "Signed, sealed, and delivered by X. Y., as the attorney on behalf of the above-named G. A., in my presence, &c."

VII.

Precedent VII.

TRANSFER BY INDORSEMENT OF CONDITIONAL BILL OF SALE. (*a*)

1. Parties. THIS INDENTURE, made, &c., between the within-named C. D. (*mortgagee*) and E. F. (*transferee*), of, &c., of the other part.

2. Recitals. WHEREAS the within-mentioned sum of £ , with interest thereon from the day of last is owing to the said C. D. on the security of the within-written indenture, AND WHEREAS the said E. F. has agreed to pay to the said C. D. the said sum of £ and £ as the interest thereon at the within-mentioned rate of per cent. per annum from the said day of last (making together £) upon having such transfer as is hereinafter contained of the said debt of £ and interest and the securities for the same;

3. That principal and interest are due.

4. Agreement to transfer.

5. Testatum. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement and in consideration of the sum of £ upon the execution of these presents to the said C. D. paid by the said (E. F. the receipt whereof is hereby acknowledged), he, the said C. D., doth hereby assign unto the said E. F., his executors, administrators, and assigns, ALL THAT the said principal sum of £ so owing as aforesaid to the said C. D. on the security of the within-written indenture, and the interest now due and henceforth to become due for the same, AND ALSO all and singular the household furniture, plate, plated articles, linen, glass, china, fixtures, chattels, and premises in the within-written indenture comprised or expressed to be thereby assigned or which now by any means are vested in the said C. D., subject to redemption by virtue of the within-written indenture, AND ALL THE ESTATE (*b*), right, title, interest, claim, and demand whatsoever, of him the said C. D., in, to, and upon the same premises; TO HAVE AND TO HOLD the said principal sum, interest, and chattels, and all other the premises hereinbefore expressed to be hereby assigned unto the said E. F., his executors, administrators, and assigns, SUBJECT nevertheless to such right of redemption as the

6. Assignment of mortgage debt.

7. Parcels.

8. Habendum.

9. To transferee.

(*a*) Notice, in writing, of the assignment should be given to the mortgagor: (see Judicature Act, 1873, sect. 25, 6.)

(*b*) A power of attorney is no longer required: (see Judicature Act, 1873, sect. 25, 6.)

same premises are now subject to by virtue of the within-written indenture, on payment to the said E. F., his executors, administrators, or assigns, of the said sum of £ and the interest now due as aforesaid and henceforth to become due for the same. AND THE SAID C. D. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., his executors, administrators, and assigns, that he the said C. D. has not done or knowingly suffered or been party or privy to anything whereby the said premises hereinbefore expressed to be hereby assigned, or any part thereof, are, is, or may be impeached, affected, or incumbered in title, estate, or otherwise howsoever, or whereby he is in any wisehindered from assigning the same premises or any part thereof in manner aforesaid. IN WITNESS, &c.

Precedent VII.

10. Subject to redemption.

11. Covenant by mortgagee that he has not incumbered.

FORMS.

Form I. AFFIDAVIT OF EXECUTION OF BILL OF SALE. (*a*)

In the High Court of Justice.

QUEEN'S BENCH DIVISION.

I, W. W., of [*set out the residence of the deponent*], a solicitor of the Supreme Court, make oath and say as follows:

1. The paper writing hereunto annexed is a true copy of a bill of sale and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution of such bill of sale.

2. I was present, and saw A. B. in the said bill of sale named, who resides (*b*) at, &c., and is [*insert occupation of grantor*] duly execute the said bill of sale, and the same was made or given by him on the day of 18 .

3. The name or signature, W. W., subscribed as the attesting witness to the said bill of sale, is in my own handwriting, and I reside at , and am a solicitor of the Supreme Court. (*c*)

4. Before the execution of the said bill of sale the effect thereof was explained to the said A. B. by me.

SWORN at on the day of 18 . } (Signed), W. W.

Before me

(Master of High Court or Commissioner empowered to take affidavits.)

(*a*) This affidavit is framed on the assumption that it is made by the attesting solicitor, who seems the proper person to do so. But the Act does not in terms require it should be made by him.

(*b*) Both the private residence and the place of business of the grantor should be given (*Ex parte Jerningham*, 9 Ch. Div. 466), though either is probably sufficient. See *ante*, p. 59. If the grantors are a company, the situation of the principal or registered office should be given.

(*c*) If there are two attesting witnesses, say, "3. The names or

AFFIDAVIT OF EXECUTION OF A BILL OF SALE MADE BY A SHERIFF. Form II.

I, W. W., of, &c., a solicitor of the Supreme Court, make oath and say as follows:

1. The paper writing hereunto annexed is a true copy of a bill of sale, and of every schedule and inventory thereto annexed or therein referred to, and of every attestation of the execution of such bill of sale.

2. The said bill of sale was made or given on the day of 18 , by G. A., the sheriff of the county of , therein named [*or* by E. E., who then was one of the deputies of the said G. A.], under and in the execution of a writ of *fi. fa.* issued out of the Division of the High Court of Justice, against C. D., the person so named in such bill of sale.

3. The said bill of sale was duly executed in my presence, and was duly attested by me.

4. The said C. D. (*the person against whom the process issued*) resides at, &c., and is a, &c.

4. The name W. W., subscribed as the attesting witness to the said bill of sale, is in my own handwriting, and I reside at, &c., and am a solicitor of the Supreme Court.

Sworn, &c.

CONSENT TO ORDER FOR ENTRY OF SATISFACTION ON BILL OF SALE. Form III.

I hereby consent to an order that a memorandum of satisfaction be written upon the registered copy of the bill of sale given for securing the sum of £ , bearing date the day of 18 , made between [*insert the names and descriptions of the parties in the original bill of sale*] and a copy of which said bill of sale was registered on the day of 18 , the debt for which such bill of sale was made or given having been satisfied or discharged.

(Signed), C. D.

Signed in the presence of
(A solicitor of the Supreme Court).

signatures, W. W. and X. Y., subscribed as the attesting witnesses to the said bill of sale are of the proper handwriting of me, this deponent, and of the said X. Y.; and I say that I reside at, &c., and am a solicitor of the Supreme Court, and that the said X. Y. resides at, &c., and is, &c."

Form IV. AFFIDAVIT VERIFYING CONSENT TO ORDER FOR ENTRY OF SATISFACTION.

I, W. W., of, &c., a solicitor of the Supreme Court, make oath and say as follows:

I was present on the day of , 18 , and saw C. D., of, &c. [*insert name and present description of grantee*], who at the time the bill of sale hereinafter mentioned was made or given resided at, &c., and was, &c. [*insert description of grantee at time bill of sale was made*], sign the consent hereunto annexed to an order that a memorandum of satisfaction be written upon the registered copy of a bill of sale bearing date, &c. made between, &c. [*insert names and descriptions of parties in the original bill of sale*], and registered on the day of 18 , the debt for which such bill of sale was made or given having been satisfied or discharged.

(Signed), W. W.

Sworn, &c.

STAMPS ON BILLS OF SALE.

By the Stamp Act, 1870, c. 97, s. 57, "A copy of a bill of sale is not to be filed in any court unless the original, duly stamped, is produced to the proper officer."

By that Act bills of sale are treated as being

i. Absolute;

ii. By way of mortgage, and are made liable to an *ad valorem* duty accordingly.

(i.) Absolute bills of sale are subject to the same duty as CONVEYANCES or TRANSFERS on sale as follows: (*a*) Stamps on absolute bills of sale.

Where the amount or value of the consideration for the sale does not exceed ...	£5	... ...	£0	0	6
Exceeds £5 and does not exceed	10	... ...	0	1	0
,, 10 ,,	15	... ...	0	1	6
,, 15 ,,	20	... ...	0	2	0
,, 20 ,,	25	... ...	0	2	6
,, 25 ,,	50	... ...	0	5	0
,, 50 ,,	75	... ...	0	7	6
,, 75 ,,	100	... ...	0	10	0
,, 100 ,,	125	... ...	0	12	6
,, 125 ,,	150	... ...	0	15	0
,, 150 ,,	175	... ...	0	17	6
,, 175 ,,	200	... ...	1	0	0
,, 200 ,,	225	... ...	1	2	6
,, 225 ,,	250	... ...	1	5	0
,, 250 ,,	275	... ...	1	7	6
,, 275 ,,	300	... ...	1	10	0
For every £50 and also for any fractional part of £50 of such amount or value			0	5	0

For the meaning of the term "conveyance on sale," and for the mode of calculating the duty where the consideration consists of stock and securities, or of money payable periodically, or of a past debt, or where there are several instruments, see sections 70–77 of the Act. By section 78 "Every instrument . . . . whereby any property on any occasion except a sale or mortgage

(*a*) Stamp Act, 1870, c. 97, sched.

is transferred to or vested in any person is chargeable with duty as a conveyance or transfer of property." See also s. 109.

Stamps on conditional bills of sale.

(ii.) Bills of sale by way of MORTGAGE are liable to stamp duty as follows: (*b*)

(1) Being the only or principal or primary security for The payment or repayment of money not exceeding £25	£0	0	8
Exceeding £25 and not exceeding £50	0	1	3
,, 50 ,, 100	0	2	6
,, 100 ,, 150	0	3	9
,, 150 ,, 200	0	5	0
,, 200 ,, 250	0	6	3
,, 250 ,, 300	0	7	6
,, 300			
For every £100 and also for any fractional part of £100 of such amount	0	2	6
(2) Being a collateral, or auxiliary, or additional, or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped: For every £100 and also for any fractional part of £100 of the amount secured	0	0	6
(3) TRANSFER or ASSIGNMENT of any mortgage, bond, debenture, or of any money or stock secured by any such instrument: For every £100 and also for any fractional part of £100 of the amount transferred or assigned	0	0	6
And also where any further money is added to the money already advanced:	The same duty as a principal security for such further money.		
(4) RECONVEYANCE, RELEASE, &c., of any such security as aforesaid or of the benefit thereof, or of the money thereby secured: For every £100 and also for any fractional part of £100 of the total amount or value of the money at any time secured	0	0	6

Definition of mortgage.

The term mortgage means (*c*) a security by way of mortgage for the payment of any definite or certain sum (*d*) of money

(*b*) Stamp Act, 1870, c. 97, sched.

(*c*) Stamp Act, 1870, c. 97, s. 105,

(*d*) The definite and certain sum here referred to means the principal sum advanced, and does not include interest, if the amount be not mentioned in the instrument, even though such interest commence from a day prior to the date of the instrument (*Barker* v. *Smark*, 7 M. & W. 590); nor does it include moneys charged on the mortgaged property which in equity would be considered as incidental to the mortgage, such as costs and expenses of the

advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; and includes (among other things) "further charge . . . . of or affecting any property (*e*) real or personal whatsoever;" conveyances in trust for sale, intended only as a security "*except* where such conveyance is made for the benefit of creditors generally, or of creditors specified, who accept the provision made for payment of their debts in full satisfaction thereof, or who exceed five in number;" any defeasance (*f*); Also any agreement, contract, or bond, accompanied with a deposit of title deeds for making a mortgage of any property comprised in such title deeds. (*g*)

Security for future advances, how to be charged.

(1) "A security (*h*) for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously due, is to be charged, where the total amount secured or to be ultimately recoverable, is in any way limited with the same duty as a security for the amount so limited."

(2) "Where such total amount is unlimited, the security is

mortgagee in executing the power of sale (*Doe* v. *Snaith*, 8 Bing. 146), or in procuring renewals of leases (*Wroughton v. Turtle*, 11 M. & W. 561; and see Stamp Act, 1870, c. 97, s. 107 (3)), or in paying premiums on policies (*Lawrance* v. *Boston*, 7 Ex. 28; and see Stamp Act, 1870, s. 107 (3)); or in paying rates and taxes in respect of the mortgaged property (*Doe* v. *Bragg*, 8 A. & E. 620). Where an uncertain sum not otherwise recoverable is charged on the mortgaged property, the onus of proving that the stamp will not cover such uncertain sum lies on the party taking the objection: (*Paddon* v. *Bartlett*, 2 A. & E. 9; see also *Marine Investment Company* v. *Haviside*, L. Rep. 5 H. of L. 624.) (Most of the cases cited in this note were under 55 Geo. 3, c. 184, sched.)

(*e*) The goodwill of a trade is property within the meaning of the Stamp Act: (*Potter* v. *Commissioners of Revenue*, 10 Ex. 147.)

(*f*) A separate stamp on a defeasance to a bill of sale seems to be unnecessary: (*Cawthorne* v. *Holben*, 1 N. R. (B. & P.) 279; *Barker* v. *Aston*, 1 F. & F. 102.

(*g*) Where title deeds are deposited by way of equitable mortgage a memorandum merely stating the purpose for which they are deposited need not be stamped as an agreement: (*Meek* v. *Bayliss*, 31 L. J. Ch. 448.) But a memorandum operating as a conveyance requires a stamp as such: (*Horsfall* v. *Key*, 17 L. J. Ex. 266.) Other agreements are subject to a stamp of 6d., but not if the matter thereof is of a less value than £5, or if relating to the sale of any goods, wares, or merchandise: (Stamp Act, 1870, c. 97, sched.)

(*h*) Stamp Act, 1870, c. 97, s. 107.

to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover."

Proviso.

(3) "Provided that no money to be advanced for the insurance of any property comprised in any such security against damage by fire, or for keeping up any policy of life insurance comprised in such security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in such security upon the dropping of any life whereon such property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty."

Security for repayment by periodical payments, how to be charged.

"A security (*i*) for the payment of any rentcharge, annuity, or periodical payments, by way of repayment, or in satisfaction or discharge of any loan, advance, or payment intended to be so repaid, satisfied, or discharged, is to be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced, or paid."

For the method of calculating the duty on securities for stock, see s. 106.

SCHEDULES, INVENTORIES, (*k*) or documents of any kind whatsoever, referred to in or by, or given in evidence as part of, or as material to, any other instrument charged with any duty, but which are separate and distinct from, and not indorsed on or annexed to, such other instrument:

Where such other instrument is chargeable with any duty not exceeding 10s. ...	The same duty as such other instrument.
In any other case	£0 10 0

(*i*) Stamp Act, 1870, c. 97, s. 108.

(*k*) Stamp Act, 1870, c. 97, sched. A deed properly stamped is not inadmissible in evidence by reason only that an inventory referred to therein is inadmissible for want of a stamp: (*Duck* v. *Braddyl*, 13 Price 455, at p. 469; *Daines* v. *Heath*, 3 C. B. 938; *Dyer* v. *Greene*, 1 Ex. 71.)

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